

THE BANNED BOOKS
OF ENGLAND

By the Same Author

SEX AND REVOLUTION

THE BANNED BOOKS OF ENGLAND

by
ALEC CRAIG

With a Foreword
by
E. M. FORSTER

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And indeed we see it ever falleth out that the forbidden writing is thought to be certain sparks of a truth that fly up in the faces of those that seek to choke it, and tread it out, whereas a book authorised is thought to be but temporis voces, the language of the time.

BACON: *An Advertisement touching the Controversies of the Church of England*

Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties.

MILTON: *Areopagitica*

We have now recognised the necessity to the mental well-being of mankind (on which all their other well-being depends) of freedom of opinion, and freedom of the expression of opinion, on four distinct grounds; which we will now briefly recapitulate.

First, if any opinion is compelled to silence, that opinion may, for aught we can certainly know, be true. To deny this is to assume our own infallibility.

Secondly, though the silenced opinion be an error, it may, and very commonly does, contain a portion of truth; and since the general or prevailing opinion on any subject is rarely or never the whole truth, it is only by the collision of adverse opinions that the remainder of the truth has any chance of being supplied.

Thirdly, even if the received opinion be not only true, but the whole truth; unless it is suffered to be, and actually is, vigorously and earnestly contested, it will, by most of those who receive it, be held in the manner of a prejudice with little comprehension or feeling of its rational grounds. And not only this, but, fourthly, the meaning of the doctrine itself will be in danger of being lost, or enfeebled, and deprived of its

vital effect on the character and conduct; the dogma becoming a mere formal profession, ineffectual for good, but cumbering the ground, and preventing the growth of any real and heartfelt conviction, from reason or personal experience.

JOHN STUART MILL: *On Liberty*

Toleration or liberty have no sense or use except as toleration of opinions that are considered damnable, and liberty to do what seems wrong.

BERNARD SHAW: Preface to *The Showing-up of Blanco Posnet*

No argument for the suppression of "obscene" literature has ever been offered which, by unavoidable implication, will not justify, and which has not already justified every other limitation that has ever been put upon mental freedom.

THEODORE SCHROEDER: "Obcene" Literature and Constitutional Law

*We were right, yes, we were right
To smash the false idealities of the last age,
The humbug, the soft cruelty, the mawkishness,
The heavy tyrannical sentimentality,
The inability to face facts, especially new facts;
All of which linger on so damnably among us.*

: : : : :

*I think we were right to go groping in all forbidden places,
Uncovering horrors politely forgotten
And facing them too, . . .*

RICHARD ALDINGTON: *The Eaten Heart*

The censor shall dream of knickers, a nasty beast.

W. H. AUDEN: *The Orators*

F O R E W O R D

By E. M. FORSTER

THIS book is about banned books, and the foreword to it ought really to have been written by an educationalist or by a lawyer. Who is a literary man, that he should here preface or pronounce? He is merely the ordinary reader. And the best I can do is to indicate to other readers Mr. Craig's general attitude towards his subject, so that they may decide in advance whether he is likely to interest them. Well, he is quiet and matter-of-fact, he isn't sanctimonious, he isn't naughty-naughty, and though he feels indignation he controls it. Those who sympathize with such an attitude—I do myself—will appreciate his work. Those who feel that sex is terribly sinful hot-stuff should not read him, but should stick to their favourite newspapers, where they will find vice denounced in an exciting and enjoyable fashion every Sunday.

Mr. Craig has three aims, all serious. Firstly, he has to explain the law of Obscene Libel. This chiefly entails an examination of the Campbell Act and of the unfortunate ruling upon that Act which was made by Chief Justice Cockburn.

His second aim is to show how the law works. He takes various cases—e.g. the Montalk case, the *Sexual Impulse* case, the *Well of Loneliness*, *Ulysses*,

The Banned Books of England

the Havelock Ellis and Bedborough case—and shows how unfairly and uncertainly justice functions. The law seems so vague, one almost might say so temperamental, that neither publisher nor printer nor author can be certain when it will pounce. Sometimes a book gets through—the *Seven Pillars of Wisdom*, for instance—sometimes it is banned at once, like the *Sleeveless Errand*, sometimes it escapes but is pounced on after a few years, like *Boy*. It is in the first place seized by a policeman, and the police are increasingly delicate; only the other day a constable suggested that the telling of improper stories in a public-house should be regarded as an offence. Having shocked a policeman it then comes before a magistrate, and he is usually a family man who wishes to stand well with other family men. He is doubtless conscientious, he may be enlightened and cultivated, but he has to decide whether the book is “obscene” without having any reliable definition of obscenity to guide him, so he naturally plays for safety. With the result that works of literary merit and scientific value get banned.

This brings us to Mr. Craig’s third aim: reformation. Can the law be improved? In his final chapter he discusses possibilities. He decides that what is wrong is not the Campbell Act but the Cockburn ruling, and he believes that if the House of Lords could restate the law, “reverting to the definition of obscenity which Lord Campbell stated to be the

Foreword

legal one in 1857, the serious writer, whether of fiction or of non-fiction would have little to complain about." This chapter should be studied carefully. Its last words are "Back to Campbell, and more sex-education."

More education? Yes indeed, but who is going to educate us? Our pastors and masters? They are not very inspiring. Sir Thomas Inskip, for instance, regards it as axiomatic that the gratification of sexual appetite is an "unsavoury subject"; the Bishop of London would like to build a bonfire of contraceptives and to dance round it; the late Lord Brentford was so obsessed by the importance of school-children that he would have planed down all literature and art to their level or supposed level. Not very helpful. Shall we, perhaps, be educated instead by "the people"? Mr. Craig is equally discouraging here. He points out that the record of Labour is, in this connection, not a good one, and he might have added that in the Soviet Union sex-legislation has recently taken a retrograde and an unscientific turn. No, there is no magic freshness in "the people." The working classes become just as stuffy and timid as the middle classes, as soon as they are in positions of authority and responsibility. Our only hope of education lies in ourselves, whatever our class, in the individual, in decent personal talk, and this is the kind of book, provocative yet restrained, which might set such talk going.



CONTENTS

CHAPTER	PAGE
<i>Foreword by E. M. FORSTER</i>	9
<i>Introduction</i>	15
I. THE LAW OF OBSCENE LIBEL	
Outline— <i>Ulysses</i> —The Customs—D. H. Lawrence—Pictorial Art— <i>The Cantab</i> — <i>The Well of Loneliness</i> —Threat and Fear of Prosecution—Foreign and Classical Literature—Montalk's Case—The League of Nations	19
II. THE SEXUAL IMPULSE CASE	61
III. A WIDER VIEW	
History—The Public Morality Council—The Libraries—The Irish Free State—Other Dominions	78
IV. COMPARISON WITH AMERICA	
American Law—Anthony Comstock—Margaret Sanger—Birth-Control Propaganda in England—Recent Developments in the U.S.A.	101
V. THE INJUSTICE OF THE LAW	
Jury or no Jury—Position of Author and Publisher—Havelock Ellis—James Hanley's <i>Boy</i> — <i>Bessie Cotter</i> —Sir James Stephen—The Bradlaugh Trial—Edward Truelove	123
	13

The Banned Books of England

CHAPTER

PAGE

VI. REFORM

How Far Should Demand for Reform Go?— Pornography—Safety First? — “Gravity” v. “Levity”—Method: Restricted Publication, Legislation, Legal Appeal—Sex Education	150
<i>Appendix</i>	180
<i>Bibliography</i>	187
<i>Index</i>	197

INTRODUCTION

THE average young Englishman derives his ideas about the freedom of the printing press from the numerous passages dealing with that matter in the classics of his national literature. He hears of the works containing these passages at school, and even if he does not read them, he supposes that the unanswerable arguments there set out for all time are accepted as current coin of the realm. Perhaps he knows vaguely that the police have powers to deal with "feely postcards" and "dirty books," but it certainly does not occur to him to connect these with those grave and high principles of liberty which he is taught to believe are the very breath of his native country. A shock of surprise is therefore his usual reaction when he finds that certain works by reputable authors are unobtainable in England, or when he hears for the first time of a prosecution of a literary work (perhaps by one of his friends) for obscenity.

Prosecutions of this kind are in fact more frequent than is generally realised, and have of late become increasingly serious as a menace to literary and scientific freedom. So much so that the author feels the time to be opportune for a restatement of the arguments in favour of the liberty of letters in relation to current conditions. In undertaking this task he is well aware that it has been done more than

The Banned Books of England

once since the War and by writers of eminence whose brilliance, dialectical ability, and literary credentials he cannot hope to rival. His excuse for yet another essay in the subject is the apparent failure of previous efforts to affect either law or practice, or appreciably to stem the slowly rising tide of reaction in this regard. It is hoped that a sober treatise, characterised by careful documentation and restraint of expression, may meet with some modicum of success where more scintillating polemics have failed. The task is the more difficult since the realm of knowledge in which the restrainers of free expression are nowadays operating is that which treats of sex, a subject on which few find it possible to keep a cool head and an even pulse. But the defender of liberty has ever been in this position. It is only when a subject becomes important and vital enough for men to become excited and angry about it that it elicits the attention of the censor and the constable. The liberty of speech for which Milton argued was essentially a liberty to argue about religion, for this was a matter which the seventeenth-century Englishman deemed so important that he was prepared to fight about it. Today we discuss the existence or non-existence of the deity, the probability of the virgin birth, or the size of Noah's ark, and not even episcopal calm is ruffled, because men have lost the sense that these things are of vital importance to them. In sexual matters the situation is different. Sexual morality, say

Introduction

some, is in the melting-pot. Others say that orthodoxy is proving its validity by the effectiveness of its back-to-the-wall defence. Certainly, diametrically opposed views are put forward by men equally and passionately convinced of the righteousness of their opinion. I treated of this subject in my previous book *Sex and Revolution*. There I expressed a point of view which of its nature could only have a minority appeal. Here I address myself to every man, whatever his views on this issue, except him who holds that it can be rightly decided in the dark without the light of reason and free discussion. To lay claim to completeness of treatment would be to put this book forward as a work of erudition, so deep and extensive is the scar which during the last two hundred years the hand of the censor has seared upon the face of English literature. I make no such claim. All that I have attempted is an exposition of the present situation sufficiently detailed to equip the reformer with the knowledge necessary for his task, together with so much of past history as is necessary to a proper understanding of the present.

In writing the book I have followed the sequence of ideas which I thought would most readily appeal to the general reader. Those who would have preferred a strictly chronological treatment will be assisted by the appendix. My indebtedness to previous authors is freely acknowledged throughout the book. Where full particulars of works referred to are not

The Banned Books of England

given in the text they will be found in the bibliography. Some of the material has previously appeared in *Plan*, the editors of which periodical should be congratulated on the publicity given to *The Sexual Impulse* case. My thanks are due to Dr. Havelock Ellis for some very useful material and references, and for the loan of the only copy of Theodore Schroeder's great and valuable work that I was able to trace at the time. Mr. A. F. Dawn has supplied me with some material gathered while engaged in research work at the University of London. I gratefully acknowledge the help given me by Mr. Ambrose E. Appelbe and Mr. R. S. W. Pollard, Solicitors, with legal matters and by Mr. R. H. W. Case and others with the proofs and the index.

A. C.

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THE BANNED BOOKS OF ENGLAND

CHAPTER I

THE LAW OF OBSCENE LIBEL

THERE is no literary censorship in England in the true sense of the word. Legal control of literary expression is effected through the operation of the law of libel. A "libel" is by derivation a "little book." But in legal terminology it includes any book, journal, paper, picture or other representation. The libel may be blasphemous, seditious, defamatory or obscene in character. It is libel of the last type which will form the subject matter of this book, for from the literary and scientific point of view it is by far the most important. When we speak of a "banned book" we generally mean one that has been judicially held to be an obscene libel, or at any rate one that has been treated by some library or other institution as if it were. It is a necessary prelude to any clear thinking on the matter of restriction of literary expression—a matter of the highest importance—to understand how the "publication" of a "libel" which is "obscene" came to be a crime, and just what is involved in this crime, and how the law is enforced.

The Banned Books of England

OUTLINE

Andrew Lang tells us: "English literature had been at least as free spoken as any other from the time of Chaucer to the death of Smollett. Then, in twenty years at most, English literature became the most 'pudibond,' the most respectful of the young person's blush, that the world has ever known."

This revolution, however, was carried through by voluntary means and by the pressure of opinion. Eighteenth-century law took little heed of the publication of obscenity. Both *The Fifteen Plagues of a Maidenhead*¹ (which presumably lived up to its title) and Rochester's erotic poems were found to be outside its scope, while it was the impiety rather than the obscenity of Wilkes's poems that disturbed his judges. By 1800, however, the Bench had moved in sympathy with public opinion, and the offence known in legal terminology as "the publication of an obscene libel" assumed considerable prominence in the forensic landscape. As early as 1729, in a case² dealing with a book called *Venus of the Cloister*, this act had been held to be a common law misdemeanour, that is to say, an offence (originally less grave than felony) deriving not from any Act of Parliament (though it has been subsequently recognised in several), but in theory from oral tradition, and in practice from the

¹ Read's case (1708).

² *R. v. Curl.*

The Law of Obscene Libel

body of recorded judicial decisions on the subject.¹ Of recent years it has been possible to dispose of charges summarily if the parties consent,² and many cases of great importance have had a no more exalted setting than the Police Court.

This crime, however, was never invoked against reputable literature till well into the second half of the nineteenth century. Whatever forces made for the puritanical character of early Victorian literature they had no legal sanction. Even against palpable pornography the law was not very effective. A vast trade in pornographic material, much of it imported from abroad,³ grew up round Holywell Street. Suppression

¹ *Banned in England*, by Gilbert Armitage. I am indebted to this book and to *To the Pure* by Ernst and Seagle for much that appears in this chapter.

It is also a misdemeanour to procure with intent to publish—
Dugdale v. R. (1853). ² Criminal Justice Act, 1925.

³ I doubt if it was all as bad as it was painted. The great stand-by of the Victorian youth was translations of the novels of the now almost forgotten Paul de Kock. This taste, according to de Kock himself (*Memoirs*, Chap. viii), was shared by Pope Gregory XVI. Item No. 587 of *L'Enfer de la Bibliothèque Nationale* notes:

La vogue de Paul de Kock fut si grande en Italie, que S.S. Léon XIII demanda à Ferdinand Brunetière qui le venait visiter, et cela avant toute bénédiction ou courtoisie oratoire préliminaires: "Et comment va ce bon signor Paôlo de Koko? . . ." Inutile d'ajouter que Paul de Kock (1794-1871) était mort depuis longtemps.

In 1853 Marston and Co. began an edition of de Kock in which it was "proposed to give a translation of his best works, carefully weeded from the indelicacy and impiety from which scarcely any French work is entirely exempt." "A more thorough insight into French manners and customs," we continue to read, "may be

The Banned Books of England

was difficult because of the safeguards to the liberty of the subject which surround the administration of the common law. Further, stocks could not be seized, and even if a shopkeeper were successfully prosecuted and imprisoned, his wife would often continue the business until he was at liberty to resume it. The Vagrancy Act of 1824 made it a summary offence to expose obscene books and prints in public places,¹ and similar provisions were inserted in the Vagrancy Act of 1838, the Metropolitan Police Act of 1839, and the Towns Police Clauses Act of 1847, but these remedies were entirely inadequate.

Things began to change when a bill to restrict the sale of poisons was considered in the House of Lords contemporaneously with a particularly lurid pornography trial before Lord Chief Justice Campbell. His Lordship turned his mind to "a sale of poison more deadly than prussic acid, strychnine or arsenic" as he described the Holywell Street traffic.² The

acquired from one of de Kock's novels, than from fifty volumes of travels; and an English father may judge from the portrait of a Frenchwoman (painted by a countryman, recollect) how much he is likely to gain by educating his family abroad."—Quotation from the Translator's Preface to *The Modern Cymon*.

¹ Definition was extended by the Public Health Acts Amendment Act, 1907.

² "Much of the justification for intolerance derives its authority from false analogies, wrongfully carried over from physical relations into the realm of the psychic.

• • • • •
"Ethics is not one of the exact sciences. Probably it never will be. Until we are at least approximately as certain of the existenc

The Law of Obscene Libel

Obscene Publications Act of 1857 was the result. It provided for the destruction of any obscene publications held for sale or distribution on information laid before a court of summary jurisdiction. The bill was strongly opposed in both houses and only passed on the Lord Chief Justice's assurance that:

"The measure was intended to apply exclusively to works written for the single purpose of corrupting the morals of youth and of a nature calculated to shock the common feelings of decency in any well-regulated mind. . . . He was ready to make what was indictable under the present law a test of obscenity."

The circulation of literary works even though they were certainly of a polluting character, Lord Campbell said, as he held *The Lady of the Camellias* in his hands and regarded it with horror, could only be stopped by the force of public opinion and an improved taste. Substantial amendments to the Bill were made by the Commons. Scotland was taken out of its scope on the insistence of Scottish members that the common law in their country was even more stringent. Under the Act the Court issues a warrant for the search of the premises complained of and for the seizure of the alleged obscene matter. The proprietor is then called upon to show cause in Court why the matter should not be destroyed. No warrant can issue until and tests of 'moral poison,' as we are of the physical characteristics and consequences of carbolic acid, it is folly to talk of 'moral poison' except as a matter of poetic licence."—Schroeder's "*Obscene Literature and Constitutional Law*, page 83.

The Banned Books of England

evidence of a common law offence has been established. This provision is generally met by sending a plain-clothes policeman¹ to purchase one of the books, prints or other articles concerned.

Lord Campbell's Act enabled the common law as it then stood to be enforced. But the common law was soon to undergo a change and the forebodings of those who opposed the Act were amply justified. In 1868 an appeal came before his successor in office against a seizure under the Act of a pamphlet entitled *The Confessional Unmasked Showing the Depravity of the Romish Priesthood, the Iniquity of the Confessional, and the Questions Put to Females in Confession*. It was common ground that the purpose of the pamphlet was to discredit the Roman Catholic Church and Lord Chief Justice Cockburn had every sympathy with that object. But he held that it could not avail to excuse obscenity and

“the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall.”

So much for the “single purpose” and “the well-regulated mind” of Lord Campbell’s definition! Sir Alexander Cockburn’s famous dictum has been in-

¹ A bookseller who after being pestered on six occasions by a police *agent provocateur* posing as an Army Officer obtained for him two books which he did not stock was consequently sentenced to three months’ imprisonment and £100 fine (*The Times*, April 20, 1933).

The Law of Obscene Libel

corporated into the law of the land and it is the criterion by which allegations of literary obscenity are judged. Since it was laid down, prosecutions, threats of prosecution and fear of prosecution have been successful in banning such books as Havelock Ellis's *Studies in the Psychology of Sex*, Shane Leslie's *The Cantab*, James Joyce's *Ulysses*, D. H. Lawrence's *Rainbow* and *Lady Chatterley's Lover*, and Radclyffe Hall's *The Well of Loneliness*, while its effect on the presentation of foreign and classical literature to the people of this country has been a serious one.

ULYSSES

The significance of the law of obscene libel was brought home to the ordinary person with literary interests by the banning of *Ulysses*.

The literary importance of this work is beyond all cavil. Its influence on the style of many modern writers has been so great that an acquaintance with it is necessary to any study of English literature which lays claim to completeness. University lecturers freely refer to it, there is a considerable literature of unbanned books about it, and its bright blue cover with white lettering is a familiar sight on the shelves of private libraries. T. S. Eliot, the celebrated poet, put it on an English reading list at Harvard in 1932.

The legal troubles of *Ulysses* began when it was appearing in serial form in *The Little Review*, a New York magazine. In the case of *Sumner v. James Joyce*

The Banned Books of England

the Court ruled that the publication contravened American law and the defendants were fined \$100. This case made it impossible to copyright the work in the U.S.A. and pirated and bowdlerised editions were issued to meet the heavy demand for it. It is said¹ that no less than 30,000 copies have been sold by clandestine methods in America and elsewhere. From these sales the unfortunate author who was becoming more and more blind derived no royalties. In February 1922 the complete work was published by Shakespeare & Co. in Paris. Five hundred copies of this edition were burned by the American Post Office. A similar fate was meted out to 499 copies on the quay of Folkestone Harbour by the English customs. Consequently it has been impossible to buy copies of this work in England and the law did not permit Sotheby's to sell the corrected proofs in London.² A limited edition has however just been issued by a well-known English publisher.

Latterly the work has been much more fortunate in America, where by the way the manuscript was sold for \$1,975. In 1934 Judge Woolsey raised the ban in a memorable judgement which concluded:

It is only with the normal person that the law is concerned. Such a test as I have described, therefore, is the only proper test of obscenity in the case of a book like "Ulysses" which is a sincere and serious attempt to

¹ *Time Magazine*, December 18, 1933.

² *Time and Tide*, June 1, 1935.

The Law of Obscene Libel

devise a new literary method for the observation and description of mankind.

I am quite aware that owing to some of its scenes "*Ulysses*" is a rather strong draught to ask some sensitive, though normal, persons to take. But my considered opinion, after long reflection, is that whilst in many places the effect of "*Ulysses*" on the reader undoubtedly is somewhat emetic, nowhere does it tend to be an aphrodisiac.

"*Ulysses*" may, therefore, be admitted into the United States.

The judgement was upheld on appeal by a majority decision which overruled a dissenting opinion following closely the Cockburn standard.¹

Ulysses derives a great deal of its effectiveness from an elaborate parallelism with the *Odyssey*, a knowledge of which is necessary to its full appreciation. It certainly describes a day in the life of its hero with very great intimacy and sometimes makes use of the sort of words which small boys chalk up on walls. But it also contains forbidding polysyllabic barriers such as: *contrasmagnificandjewbangtantiality*, *maha manvantara*, *weggebobbles*, *theologicphilological*, *eppripftaph*, *honorificabilitudinitatibus*, *inverecund*, *hypospadia*, *selenographical*, *tetragammation*. The style is so difficult that it is impossible that it could have a direct popular influence of any kind. There is constant recurrence of passages like:

Ineluctable modality of the visible: at least that if no more, thought through my eyes. Signatures of all things

¹ U.S. v. *Ulysses*. See Bibliography item 31.

The Banned Books of England

I am here to read, seaspawn and seawrack, the nearing tide, that rusty boot. Snotgreen, bluesilver, rust: colored signs. Limits of the diaphane. But he adds: in bodies. Then he was aware of them, sure. Go easy. Bald he was and a millionaire, maestro di color che sanno. Limit of the diaphane in. Why in? Diaphane, adiaphane. If you can put your five fingers through it, it is a gate, if not a door. Shut your eyes and see.

Joyce himself called it a "chaffering allincluding most farraginous chronicle."¹ I made the acquaintance of the work, a year before the burning, in an R.A.F. mess where it was being handed round with some considerable expectation of fun, but only two members, who had a definite literary bent, managed to read more than a few pages.

THE CUSTOMS

The power under which *Ulysses* suffered its mediæval fate derives from Section 42 of the Customs Consolidation Act of 1876 which forbids the import of certain goods and provides that if they be brought in they "shall be forfeited and may be destroyed or otherwise disposed of as the Commissioners of Customs may direct." The forbidden goods include "indecent or obscene prints, paintings, photographs, books, cards, or other engravings, or any other indecent or obscene articles." When this

¹ James Joyce's *Ulysses* by Stuart Gilbert (Faber and Faber, 1930), page 42.

The Law of Obscene Libel

section operates against "obscene" literature the incident usually ends with the confiscation; but Sections 32-38 of the Act provide for the settlement of disputes in this and other matters arising out of the Act. The aggrieved person has the right of presenting his case either personally or in writing to one of the Commissioners "who shall hear the matter in the presence of the parties, and of any persons interested or desirous of attending" and shall take evidence on oath. The Commissioner then reports "in a narrative form" to the other Commissioners adding his own opinion. Their decision has full legal force except that the aggrieved person if still dissatisfied "can proceed by way of information in the High Court or before a Justice of the Peace under Section 207."

The way in which this power of the Customs authorities is used is illustrated by the following example. A novel entitled *The Tropic of Cancer* by Henry Miller, an American, was favourably reviewed in the *London Mercury* for December 1935 and the *New Statesman and Nation* for January 4, 1936. A book collector informs me that on the strength of these notices he ordered the work from his usual bookseller, a reputable West End firm. In due course the shop was visited by a Detective Inspector who asked "why they were importing indecent books" and told them that *The Tropic of Cancer* had been stopped by the Customs. The book collector had a very amusing interview with a very friendly official

The Banned Books of England

who graciously intimated that no further action would be taken, but he was not allowed to have the book.

The postal authorities (see page 102) co-operate in this task of shielding the British citizen from contagion; and correspondence to and from abroad is opened. A friend of mine ordered a copy of Frank Harris's *My Life and Loves*, soon after its publication in Paris in 1926, from a reputable bookseller in the Charing Cross Road. The firm duly obtained him a copy by writing to the foreign traveller of one of the best-known English publishing houses, who was then in Paris. Shortly afterwards the bookseller rang up to say that the police had called on him and demanded that the book should be handed over. My friend was only too willing to defend and sustain his purchase but the bookseller represented so forcibly his apprehensions of the consequences to himself in trouble and reputation if he was unable to comply that my friend voluntarily let him have the book back.

The work was unsuccessfully prosecuted in Paris and copies were seized by the police in New York.¹ It is of interest to note that in his *Bernard Shaw* the author relates that a copy was burnt in the Shaw household because Mrs. Shaw did not care to have it lying about the house for her servants to read, and Shaw did not scruple to acquaint Harris of the fact, to the latter's pain and indignation—surely curious

¹ Ernst and Seagle, *op. cit.* p. 241.

The Law of Obscene Libel

conduct on the part of one who has spoken so strongly against stage censorship.

D. H. LAWRENCE

The system of interfering with the transit of literature between this country and abroad in addition to attacking Joyce has not spared so eminent an author as D. H. Lawrence. The manuscript of his *Pansies* was opened and detained for some time. The internal censorship was even more cruel to him. On March 13, 1915, Messrs. Methuen and Co. were summoned before Sir John Dickinson at Bow Street and 1,011 copies of *The Rainbow* of which they were the publishers were ordered to be destroyed under Lord Campbell's Act. *Lady Chatterley's Lover*, an important work of Lawrence's, has never been published in England as it was written. It is something of a national scandal that a bowdlerised edition should have appeared soon after his death with nothing about it to inform the reader that the work was in a condition other than that in which it left the author's pen. It may be necessary to emasculate the work of a man of genius in deference to Mrs. Grundy and British hypocrisy, but to do so with neither confession nor apology is surely adding insult to injury. Of the passages omitted are those which Bernard Shaw had in mind when he said

"If I had a marriageable daughter what could I give

The Banned Books of England

her to read to prepare her? Dickens? Thackeray? George Eliot? Walter Scott? Trollope? or even any of the clever modern women who take such a fiendish delight in writing very able novels that leave you hopeless and miserable? They would teach her a lot about life and society and human nature. But they would leave her absolutely in the dark as to marriage. Even Fielding and Joyce and George Moore would be no use: instead of telling her nothing they would tell her worse than nothing. But she would learn something from *Lady Chatterley*. I shouldn't let her engage herself if I could help it until she had read that book. Lawrence had delicacy enough to tell the best, and brutality enough to rub in the worst. *Lady Chatterley* should be on the shelves of every college for budding girls. They should be forced to read it on pain of being refused a marriage licence.”¹

PICTORIAL ART

It is hardly possible to leave the subject of D. H. Lawrence without mentioning the police raid on his exhibition of pictures which hurt him so keenly. Pictorial censorship is strictly speaking outside our subject but one or two cases will be helpful as illustrating the spirit in which the law of obscene libel is operated.

In July 1929, the police raided Lawrence's exhibition. There were twenty-five pictures on show and thirteen were seized as well as four books of reproductions and a copy of *Ecce Homo* by Georg Grosz

¹ *Bernard Shaw* by Frank Harris.

The Law of Obscene Libel

the well-known German anti-militarist cartoonist. When the case came on before Mr. Mead at Marlborough Street the officer in charge of the raid admitted that there was another large volume and that he had decided to seize it and then changed his mind. It consisted of reproductions of the pictures of William Blake! The case was adjourned *sine die* with costs against the defendants on their undertaking to withdraw the thirteen pictures. The volumes of reproductions were destroyed but the Grosz book was handed back. In *Pornography and Obscenity* Lawrence says:

When the police raided my picture show, they did not in the least know what to take. So they took every picture where the smallest bit of the sex organ of either man or woman showed. Quite regardless of subject or meaning or anything else: they would allow anything, these dainty policemen in a picture show, except the actual sight of a fragment of the human pudenda. This was the police test. The dabbing on of a postage stamp—especially a green one that could be called a leaf—would in most cases have been quite sufficient to satisfy this ‘public opinion.’

This pamphlet is a passionate rejoinder to all the persecution to which he was subjected by “the grey ones,” as he called them:

This is one of the disasters of young life today. Personally, and among themselves, a great many, perhaps a majority of the young people of today have come out into the open with sex and laid salt on the tail of the

The Banned Books of England

dirty little secret. And this is a very good thing. But in public, in the social world, the young are still entirely under the shadow of the grey elderly ones. The grey elderly ones belong to the last century, the eunuch century, the century of the mealy-mouthing lie, the century that has tried to destroy humanity, the nineteenth century. All our grey ones are left over from this century. And they rule us. They rule us with the grey, mealy-mouthing, canting lie of that great century of lies which, thank God, we are drifting away from. But they rule us still with the lie, for the lie, in the name of the lie. And they are too heavy and too numerous, the grey ones. It doesn't matter what government it is. They are all grey ones, left over from the last century, the century of mealy-mouthing liars, the century of purity and the dirty little secret.

When the International Surrealist Exhibition of 1936 was being organised the officials were informed that a case of eight pictures had been stopped by the Customs and was to be destroyed. On protests being made it transpired that only two of the pictures were objected to. One was a work by Freddie the noted Danish surrealist entitled "The Fallen in the World War" showing naked mutilated bodies stalking about the battlefields of France. The other was a representation of young men dancing nude in the twilight by C. Petersoen, a Swede, called "Workshop Exhibitionism." In the upshot these two pictures were returned to Copenhagen and the remaining six subsequently appeared at the New Burlington Galleries.¹

¹ The best reports are *Daily Telegraph*, June 10, 1936, and *Manchester Guardian*, June 11, 1936.

The Law of Obscene Libel

In this relation I noticed that recently a "Leda and the Swan" which used to hang high up on the wall containing the entrance door of the National Gallery has been relegated to the basement. It is probably a copy by Rosso of a lost painting by Michelangelo and one would have thought of no small interest.

The general attitude of authority to pictorial art seems to have improved recently. On more than one occasion magistrates have held, in cases of prosecutions of periodicals of the nudist movement, that the representation of nudity is not obscene *per se*.¹

THE CANTAB

It is not only authors such as Joyce and Lawrence whose general heterodoxy may well make them unpopular with authority who are harassed by the law of obscenity. Even so devout a Catholic as Shane Leslie has not been immune. His novel, *The Cantab*, was prosecuted and solemnly destroyed in the presence of Messrs. Chatto and Windus, the publishers. As to the book itself, *A Lawyer's Notebook*² says:

There were two passages—one rather disgusting about a rape which could not have excited anyone—and the other about an encounter with a lady who wore some very precious jewel in her navel. That struck me as bizarre but not indecent.

¹ See for example *The News Chronicle* for October 30, 1935.

² Page 116.

The Banned Books of England

THE WELL OF LONELINESS

The prosecution of Jonathan Cape Ltd., under Lord Campbell's Act before Sir Chartres Biron at Bow Street on November 9, 1928, in respect of Radclyffe Hall's novel, *The Well of Loneliness*, was of considerable interest both from the legal and literary point of view.

The legal interest centres round the fact that it was held that in these cases expert evidence on the issue of obscenity is not admissible. The prosecution followed an attack on the book by James Douglas in *The Sunday Express* for August 19, 1928, in which he declared that he would rather put a phial of prussic acid¹ in the hands of a healthy girl or boy than the book in question.² The case for the prosecution, presented by Mr. Eustace Fulton, was that the theme of the book (female homosexuality) was obscene and that "A person who chose an obscene theme could not but write an obscene book." This

¹ See footnote 2, page 22 *supra*.

² This newspaper stunt and the foolish prosecution that followed it popularised discussion of a subject but little known in this country. (Flagellomania however is frequently referred to as *le vice anglais* in Continental literature.) Had the book been left alone it would have been considered by a few literary and intellectual people. Thus censorship defeats its own object. I think that a lot of unnecessary attention is drawn to one of the tales of Boccaccio's *Decamerone* by the frequent practice of printing it in a foreign language in most English translations of the book. The Italian has the chastity with which genius invests any subject matter and it was done into very delicate English by John Payne in 1886.

The Law of Obscene Libel

contention was not accepted by the Magistrate but the case continued. Mr. Norman Birkett, K.C., appeared for the publishers. The course which the case followed is well indicated by the following extracts from *The Daily Telegraph* report:

Mr. Birkett said that from any point of view this was a prosecution of great and far-reaching importance. It was important, not only to publishers, important not only to authors whose work might be impugned, but of vital importance to literature in general. The first matter of the very greatest possible importance was the fact that this book, which was challenged by the prosecution, was a book which had been received by all the critics with a chorus of praise, emphasising the dignity of its treatment, and emphasising moreover the fact that its publication, so far from being a matter calling for suppression, was for the public good.

In the course of the case he hoped to be allowed to quote the views of critics in various reviews and newspapers, which constituted a chorus of praise from those well qualified to speak upon matters affecting literature in general. Further than that, there were in court people in every walk of life who desired to go into the witness box to testify that this book was not obscene and that it was a misuse of words for the prosecution to describe it as such.

The Magistrate: The test is whether it is likely to deprave or corrupt those into whose hands it is likely to fall. How can the opinion of a number of people be evidence?

"I want," said Mr. Birkett, "to call evidence from every conceivable walk of life which bears on the test

The Banned Books of England

whether the tendency of this book was to deprave and corrupt. A more distinguished body of witnesses was never called in a court of justice."

The magistrate said he had the gravest doubt whether the evidence it was proposed to call was admissible.

Mr. Birkett: If I am not allowed to call the evidence it means that a magistrate is virtually a censor of literature.

The Magistrate: I don't think people are entitled to express what is merely an opinion upon a matter which is for the decision of the court.

Mr. Desmond MacCarthy, editor of "Life and Letters," and literary critic to the B.B.C., went into the witness box and, replying to Mr. Birkett, said he had read "The Well of Loneliness".

Mr. Birkett: In your view is it obscene?

The Magistrate: No, I shall disallow that.

Mr. Melville said he desired to associate himself with the submission that the evidence was relevant and material.

Mr. Fulton contended that it was entirely a question for the magistrate to decide whether a book was obscene or not.

The magistrate said he was quite clear that the evidence was not admissible. A book might be a fine piece of literature and yet obscene. Art and obscenity were not disassociated at all. There was a room at Naples to which visitors were not admitted as a rule, which contained fine bronzes and statues, all admirable works of art, but all grossly obscene. It did not follow that because a book was a work of art it was not obscene. Therefore he should not admit this evidence.

Mr. Birkett said he formally tendered thirty-nine other witnesses. The evidence which a number of them would have given would be identical with that of Mr. MacCarthy. In a second category would be distinguished authors and

The Law of Obscene Libel

authoresses, who would say they had read the book and in their view it was not obscene. Other witnesses would include booksellers, ministers of religion, social workers, magistrates, biologists (including Professor Julian Huxley), educationists (including the Registrar of Durham University), medical men and representatives of the London libraries.

The Magistrate: I reject them all.

The case for the defence was that in dealing with a theme of that kind in the manner in which it was dealt with in this book it could not be said that there was anything savouring of obscenity at all.

Mr. Birkett submitted that it amounted to expert evidence, as the witnesses were expert in knowing the mind of the reading public. He suggested that the test of obscenity was not the magistrate's personal view, but the view of reasonable men. Otherwise it would mean that so grave a question as this was always subject to the personal view of some particular individual who happened to be in the position of having to decide the question.

Mr. Birkett continued: "The contention for the defence is that the treatment of that theme in this book cannot possibly offend against the law or, indeed, good taste. It is done out of a sense of duty, with a high-minded desire to deal with it as a fact of life. I submit that the theme of the book is a theme which ought to be discussed just as any other phase of life ought to be discussed in order that it may be understood. Therefore, I submit, I have shown cause why the summons should be dismissed."

After quoting passages from "The Well of Loneliness," which he said had taken up two years of the life of a distinguished writer, counsel urged that it was impossible to say that it was a book which should be banned as an indecent publication.

The Banned Books of England

The book was condemned on November 16th. When the case went to appeal the aged Chairman of Quarter Sessions, Sir Robert Wallace, intimated that it would be neither "appropriate nor practicable" for his fellow justices to read the book before hearing the appeal. Dismissing the appeal he said:

There were plenty of people who would be neither depraved nor corrupted by reading a book like this. But it was to those whose minds were open to such immoral influences that he referred.

The shade of Cockburn still walked abroad! Literature sustained a great loss. The *Manchester Guardian* of November 22nd contained a letter of protest signed by a number of distinguished authors, including Bernard Shaw, Eden Phillpotts, Laurence Housman, Rose Macaulay, Edward Garnett, Lascelles Abercrombie, John Buchan, Arnold Bennett, Lytton Strachey, Sheila Kaye Smith and Laurence Binyon. The book has been translated into several languages and reissued in America without expurgation. In America it was attacked by Mr. Sumner of the New York Society for the Suppression of Vice but the publishers defended themselves in the courts and won their case.¹ Radclyffe Hall is a writer of the highest distinction, and apart from its considerable artistic

¹ Counsel for the defence led heavily with *Halsey v. N.Y. Society* in which Sumner had incurred damages for the malicious prosecution of Gautier's *Mademoiselle de Maupin*, a book with a similar theme. See item 40(a) of the Bibliography.

The Law of Obscene Libel

merit, the book is a very restrained and reasonable plea for toleration of female homosexuality.¹ The story is a biography of the heroine Stephen Gordon, a daughter of well-to-do parents. She is represented as a congenital invert, to the horror of her mother and the pity of her father. At the age of seventeen a young man Martin Hallam comes into her life. They become the dearest of friends, and she loves him devotedly, but with no thought of sex. He finally loves her with a normal love and proposes to her, and she flees from him in unspeakable consternation and revulsion. He also is devastated and goes back to his native Canada. After many adventures she becomes an ambulance driver in the War and there falls in love with Mary Llewellyn another driver. Subsequently they live in Paris, Stephen being rich, Mary penniless. Stephen is now quite happy though she frets because society holds aloof from her. But Mary is vaguely disquieted, she hardly knows why; she is restless, and in danger of forming undesirable associations. Particularly is she upset when two of her friends similarly situated come to tragic ends—one dying of consumption, the other then shooting herself. About this time Martin Hallam again appears; he has never forgotten Stephen, and has learned enough now to understand her case. He no longer

¹ See *The Times Literary Supplement* for August 2, 1928, and *The Twentieth Century* for August, 1931. The former referred to "this long novel, sincere, courageous, high-minded and often beautifully expressed."

The Banned Books of England

woos her as a lover, but wants their old friendship renewed. Stephen is glad. And then Martin falls in love with Mary and she with him. A struggle ensues between him and Stephen for Mary's love. At last Stephen sacrifices herself. She deliberately arouses Mary's jealousy, breaks with her roughly, and so delivers her over to Martin.

The novel is very austere in its treatment of sex but contains passages of considerable sensibility:

Then he started to tell her about his huge forests, so vast that their greenness seemed almost eternal. Great trees he told of, erect, towering firs, many centuries old and their girth that of giants. And then there were all the humbler tree-folk whom he spoke of as friends that were dear and familiar; the hemlocks that grow by the courses of rivers, in love with adventure and clear running water; the slender white spruces that border the lakes; the red pines that glow like copper in the sunset. Unfortunate trees these beautiful red pines, for their tough, manly wood is coveted by builders.

'But I won't have my roof-tree hacked from their sides,' declared Martin, 'I'd feel like a positive assassin!'

Ideologically, the book adopts a very fair-minded point of view about a matter that causes a vast amount of human misery, and misery which is only exasperated by driving it underground. It faces quite squarely and responsibly the social difficulties which arise from the phenomenon of which it treats. So far as normal people are concerned it could only act as a warning

The Law of Obscene Libel

against relationships which are too often embarked upon in ignorance of their real nature. With regard to the invert its only effect could be to bring a problem of human unhappiness out into the light of reason and knowledge instead of leaving it to breed additional and avoidable tragedy in the darkness of ignorance and superstition.

THREAT AND FEAR OF PROSECUTION

It must not be thought that the number of prosecutions is a measure of the amount of literary suppression caused by the law of obscenity. Naturally many books never reach publication for fear of the law. More than that many are withdrawn from publication on threat of prosecution by authority. In *The Truth about Publishing* Stanley Unwin tells an illuminating story that happened just after the suppression of *The Rainbow*. It concerns a book published by his house, *Love's Coming of Age* by Edward Carpenter. An emissary from Scotland Yard called one day with a copy in which certain passages were marked. The officer explained that these passages were objected to and asked whether the book would be withdrawn. Mr. Unwin pointed out among other things that the book had been published seven years and that the author had only recently received from nearly all the leading literary people in the country a most wonderful testimonial on the occasion

The Banned Books of England

of his birthday. He was particularly puzzled by one passage which was doubly underlined and it transpired in a subsequent interview at Scotland Yard that the official had completely misunderstood it. He at once admitted the mistake and added that he was dealing with so much "evil" that he tended to see it where it did not exist. Nothing happened in this case and the book continues to be sold to this day, but with a less courageous publisher things might well have been different. Mr. Unwin concludes:

They were taking anonymous complaints much too seriously and had succeeded with some publishers in getting books suppressed without anyone hearing about it, a great grievance, by the way, for the authors, who were surely entitled to be heard.

A classic example of threat of prosecution is the case of Swinburne's *Poems and Ballads*. In 1866 the first copies of the first series were just out when the poet's "hound of a publisher," Payne, withdrew the issue. He was distracted with terror of the public prosecutor. Apparently he believed that *The Times* was going to demand prosecution. It seems certain that a crushing review had been written for that paper in which both poet and publisher were held up to the execration of all decent people. Happily for posterity Swinburne found another and less timorous publisher and with characteristic moral courage refused to alter a word of what he had written.¹

¹ *Swinburne* by Georges Lafourcade (Bell, 1932)

The Law of Obscene Libel

Wilde's trial in 1895 made the London publishing houses very jumpy. When Edward Carpenter's publisher found that his author had privately printed a pamphlet called *Homogenic Love* he broke his contract to publish *Love's Coming of Age* and turned *Towards Democracy* out of doors. Fortunately they found better treatment elsewhere.¹

In assessing the effects of the law we must not leave out of account modifications made prior to publication against the author's better judgement. Richard Aldington's prefatory note to his powerful delineation of the tragedy of the Great War, *Death of a Hero*,² is illuminating:

This novel in print differs in some particulars from the same book in manuscript. To my astonishment, my publishers informed me that certain words, phrases, sentences, and even passages, are at present taboo in England. I have recorded nothing which I have not observed in human life, said nothing I do not believe to be true. I had not the slightest intention of appealing to any one's salacious instincts; if I had wanted to do that I should

¹ *My Days and Dreams* by Edward Carpenter. Chap. xi.

² Chatto and Windus. Mr. Aldington writes to me: "Each of my novels has been more or less mutilated in the interests of prudery by my English publishers. I don't in the least blame them, they are only doing what I should do in their position, i.e. trying to guard themselves against the working of a law which is vaguely worded and capriciously administered. Recently the United States have permitted authors much more liberty. For which reason I shall henceforth issue the complete text of my books first in America, and with indifference allow the English to make what cuts their absurd prejudices demand." Most of his past novels are now complete in the American text.

The Banned Books of England

have chosen a theme less seriously tragic. But I am bound to accept the opinion of those who are better acquainted with popular feelings than I am. At my request the publishers are removing what they believe would be considered objectionable, and are placing asterisks to show where omissions have been made. If anything "objectionable" remains, the responsibility is, of course, mine. In my opinion it is better for the book to appear mutilated than for me to say what I don't believe.

En attendant mieux,

R. A.

We may echo his concluding sentiment.

FOREIGN AND CLASSICAL LITERATURE

Almost as important as its effect on our own literature has been the distortion caused by the law of obscene libel in the presentation of foreign and Classical literature to those unable to read it in the original languages.

In the eighties of the last century a long battle was fought between Victorian prudery and Henry Vizetelly. Vizetelly was a publisher who combined a taste for the realistic school of French writers with the task of popularising Longfellow in England. He issued translations of Zola's novels which, although bowdlerised, were too much for the British public. In 1888 he was prosecuted in respect of a translation of *La Terre* and fined. The next year he repeated the offence and, although an old man of seventy, suffering from stricture, was made to serve three months in prison. He died in 1894, a ruined man as the result.

The Law of Obscene Libel

A *Times* Leader of November 1, 1888, commented on the first case as follows:

Between prudery and pruriency in such matters there is a wide debatable ground, and it is not always easy to draw the line which separates what is permissible from what is not. But if the line is not to be drawn so as to exclude translations of such works of ZOLA as "La Terre" and "Pot Bouille" it is plain that it cannot be drawn at all. Other French works of fiction published in translation by MR. VIZETELLY, such as the novels of GABORIAU and DU BOISGOBEY, are not always very healthy reading; but their main interest lies in the elucidation of mystery or in the play of intrigue, and not in mere and sheer obscenity, naked, shameless, and unutterably vile. . . . We cannot but rejoice, therefore, that MR. VIZETELLY has acknowledged his offence and been punished for it. In future, as the SOLICITOR-GENERAL intimated, anyone who publishes translations of ZOLA's novels and works of similar character will do so at his peril, and must not expect to escape so easily as MR. VIZETELLY.

When we remember that *The Times* is here voicing the educated opinion of the day on the work of man now acknowledged on all sides to be one of the masters of French literature we have an outstanding example of the fallibility of the judgements of even the best opinion on contemporary works of art which should teach us the danger and unwisdom of giving such judgements the force of law.

That this lesson has not been learned however was made plain by the recent condemnation under Lord Campbell's Act of translations of three novels by

The Banned Books of England

Pierre Louÿs, entitled: *Les Chansons de Bilitis* (1893), *Aphrodite* (1896), *Les Aventures du Roi Pausole* (1901) and of a rendering by Louÿs of Lucian's *Dialogui Meretrecii*. Pierre Louÿs who died in 1925 is highly esteemed in his own country. At the same time translations (published in 1930 and 1934 respectively) of Huysmans' *Là-Bas* and of that part of the memoirs of Brantôme, a French nobleman who accompanied Mary Queen of Scots from France to Holyrood in 1561, called *Les Vies des Dames Galantes* were also condemned. The classics were not spared. Translations (published in 1927 and 1932 respectively) of the *Satyricon* of Petronius and of the twelfth book of the *Greek Anthology* were ordered to be destroyed. The proceedings (in which The Fortune Press Ltd., and Sequana Ltd., were called upon to show cause) were commenced before Mr. Roland Powell at the Westminster Police Court on October 10, 1934. Mr. Knight prosecuting:

"submitted that the point to be considered was whether the books were regarded as obscene in this country now. The opinion of books in other countries, or of old books in other ages, was not relevant. That applied to books originally written in Latin and now translated.

The magistrate said that what he had to consider was not whether a work was of literary or of other merit, but whether it was so obscene that publication of it would amount to a misdemeanour. A classical author might lapse into obscenity.

He would rule out definitely what was described as

The Law of Obscene Libel

expert evidence to show that the authors were considered persons of importance or classical authors in their own country.”¹

The case dragged on until the following spring. One of the inconveniences of these police court proceedings is that, in the nature of things, the case only comes on after the drunks and normal charges for the day have been disposed of. Perhaps only an hour or so remains and then an adjournment is made till the next week when the same thing happens again.² A young author, who could ill afford the money, spent thirty guineas on a watching brief in this case in a vain endeavour to save his first novel. The book, *No Place for the Young* (1934), contains some fairly frank descriptions of the sexual life of Suburbia, but they form a small part of the whole and are quite subsidiary to the main theme which is a spirited expression of youthful indignation against the humbug

¹ *Daily Telegraph*, October 11, 1934. See also *The Times* for March 13, 1935. It is a point of contrast between the banning of Zola and the banning of Louÿs, that in the latter instance *The Times* did not so much as mention the author's name or the titles of the books condemned. In executing warrants issued under Lord Campbell's Act the police are allowed to take "obscene" matter other than that specified. In this case they seized a copy of Lawrence's *Pornography and Obscenity* as well as a Bible. The offence of the former was apparently the inclusion of the word "masturbation." Neither was ultimately proceeded against, and the prosecution against a translation of Plato's *Symposium* was not pressed, although plates were ordered to be removed from this and other books.

² Quarter Sessions appeals have the advantage of being heard, as a rule, without a break.

The Banned Books of England

and stupidity of those who sent the War generation to the shambles. Two other novels were condemned: *The Magnificent* by Terence Greenidge and *Little Victims* by Richard Rumbold, both published in 1933. The former is a rather sentimental novel that might almost be called Victorian only that a great deal of the sentimentality is homosexual. The latter is a tale concerned with the education of boys which had attracted considerable attention in the Press. There was also ordered to be destroyed reprints of a poem called *Don Leon* said to be of literary interest because it was attributed posthumously to Byron (falsely I think), and Greenidge's *Brass and Paint*.

With regard to an imported book, *Sane Sex Life and Sex Living*, by H. W. Long, which seems to me to do nothing more than rub in a lot of advice (most of it sound and useful, the rest fairly debatable) in homely and vigorous language, the Magistrate said:

“In my opinion this book goes beyond its style, it goes beyond what it should in matters not absolutely necessary for the purpose and it dwells too much on matters which are more fit for experience than publication and no sort of discrimination was used in the manner in which it was brought to the attention of the public. I strongly disapprove of the manner in which it has been advertised, and I condemn it.”

The defendants had only one copy of this book which had been specially ordered for a customer and was awaiting collection.

The Law of Obscene Libel

To return to translations, two from the pen of Montague Summers (published in 1927 and 1933 respectively) of books dealing with witchcraft were condemned. One was the *De Daemonialitate* of Ludovico Maria Sinistrari, an Italian who had a distinguished ecclesiastical career in the seventeenth century. The other was *Histoire de Magdalaine Bavent, Religieuse du Monastère de Saint-Louis de Louviers, avec sa confession générale & testamentaire, où elle déclare les abominations, impietez & sacriléges qu'elle a pratiquées & veu pratiquer tant dans ledit Monastère qu'au Sabbat & les personnes qu'elle y a remarquées.* Ensemble l'Arrest donné contre Mathurin Picard, Thomas Bouillé, ladite Bavent tous connus du crime de Magie, a book dedicated to the Duchess of Orleans and published in Paris in 1652. On January 23rd^r expert evidence was given to the standing of the translator as an authority on witchcraft, and to the value of this book to the anthropologist. I am aware that writings of this character contain much that is shocking and horrible and can sympathise with those who have no enthusiasm for their general distribution. But we must remember that the law only condemns them because of their sexual content. Shocking and horrible accounts of crime, executions, tortures and floggings can be published with impunity and on balance the law is wise in this respect. The point is well illustrated in an original work on witchcraft by the

* *Daily Herald.*

The Banned Books of England

translator. An account of a piece of seventeenth-century sexual foolishness which could have harmed no one is veiled in the French tongue; in a preceding passage the horrible murder of a child is described in English. Whatever one may feel about the publication of the shocking and the horrible it is surely preposterous that works of undoubted historical and scientific interest should not be available in English for the serious seeker after knowledge. The suggestion sometimes made that it is sufficient if works considered objectionable in English are available in the original tongue¹ is a "wrecking motion." In such circumstances French, German, Latin, Greek, Arabic, Sanskrit and Chinese would be the minimum linguistic requirements of the student of sexology. In this case it is worthy of note that we have that association of witchcraft with obscenity (and incidentally witch-hunting and obscenity-hunting) to which attention will be called more than once in the course of this book.

Finally, to end this long list, a bowdlerised translation from the Arabic of *Er Roud el Åater p'nezaha el Khater* by Nefzouri, a Tunisian sheik of the sixteenth century, was condemned. The book is a manual of sex instruction which contains a great deal of curious information erroneous and otherwise. Various coital positions are described and the author's state-

¹ Foreign language in itself is no defence to a charge of obscenity
R. v. Hirsch (1899)—but cases are very rare.

The Law of Obscene Libel

ment that a not uncommon one may cause sciatica is of medical interest. In his introduction he reports an interview he had when an earlier version of the book came into the hands of the Grand Vizir:

Three days after he came to me, and showing me my book, said, "This is your work." Seeing me blush, he added, "You need not be ashamed; everything you have said in it is true; no one need be shocked at your words. Moreover, you are not the first who has treated of this subject-matter; and I swear by Allah that it is necessary to know this book. It is only the shameless boor and the enemy of all science who will not read it, or make fun of it."

This work was fully translated into English via the French and published privately by the Kama Shastra Society in 1886, but has never been available to the general reader. A manuscript translation by Sir Richard Burton was destroyed by Lady Burton after his death together with his journals and some of his rare books.

The manner in which Burton's famous translation of *The Arabian Nights* has been published is a most striking example of restriction. The original and unexpurgated edition was published to private subscribers in 1885 and 1886. It consisted of 16 volumes at a guinea a volume. Subsequently in the sale room this edition has fetched prices ranging up to £50. Numerous reprints have been made of varying quality which have always fetched £10 a set and in

The Banned Books of England

many cases a great deal more according to quality and demand. This work, the only complete translation into English of the great Arabic classic, has never been made available for the ordinary reader. A translation via the French of Dr. J. C. Mardrus by E. Powys Mathers was published to subscribers at a high price in 1929.

Other Oriental works have received similar treatment. The *Kama Sutra* of Yatsyayana, for example, is a Sanskrit classic written about 300 B.C. and greatly prized by the educated classes in India. The tender anxiety for the susceptibilities and pleasure of women displayed by the author throughout the work is very appealing. This solicitude stands in marked contrast to the views expressed by that Western pundit, W. Acton, a surgeon whose book *Functions and Disorders of the Reproductive Organs* was regarded as a standard authority in the nineteenth century. In it he declared the supposition that women possess sexual feeling to be "a vile aspersion." In 1883 the *Kama Sutra* was translated into English by certain learned brahmins for the Kama Shastra Society, but the circulation was private and the price fifty shillings for half a dozen paper-covered pamphlets. The work has never been generally available in this country. Yatsyayana's work, and that of the good Sheik Nefzouri, are, one suspects, sometimes the unacknowledged source of a good deal of popular modern sexology.

The Law of Obscene Libel

We thus see that Oriental literature is quite unknown in this country in its true colours except by experts or those who have access to limited editions. A similar though less acute state of affairs exists as regards the classics. As a result of the state of the law the most scholarly of openly published translations of certain Classical authors are incomplete, while the Classical translations in popular use are so bowdlerised as to give the reader a very false conception of the Greek or Roman mind. The only translation of Casanova's *Mémoires* which approaches completeness was published for subscribers only at a high price, and so strong is the influence of national prudery that even the corresponding monument of historical interest in our own literature, Pepys's *Diary*, has only been seen in its entirety by a few scholars. A translation of the great autobiographical work of Restif de la Bretonne was published to subscribers only at a high price in 1930. Most of Proust's great saga *A la Recherche du Temps perdu* is available in English at cheap and moderate prices but two of the novels which compose it are issued in limited editions at prices beyond any but a well-filled purse.

MONTALK'S CASE

An outline of the law of obscene publication would hardly be complete without noting how little is involved in "publication" in the legal sense. Com-

The Banned Books of England

munication to one person is quite enough if the matter be obscene according to the Cockburn standard. This is well illustrated by the unhappy fate of a poet who took a vernacular translation of Rabelais's *Chanson de la Braguette*, another from Verlaine, and some original lines in the same vein,¹ to a printer to have copies made for circulation to his friends. When he had gone the printer rang up the police and complained that the poems were obscene. The poet was arrested, convicted by a jury of publishing an obscene libel and sentenced by Sir Ernest Wild, the Recorder at the Old Bailey, to six months' imprisonment on February 8, 1932. These proceedings were upheld by the Court of Criminal Appeal four weeks later and the poet duly served his sentence.

In his summing up, Sir Ernest Wild said:

"A man must not say he was a poet and be filthy. He had to obey the law just the same as ordinary citizens and the sooner the highbrow school learnt that the better for the morality of the country."

Later, the author of *The Lamp of Destiny and Other Poems* remarked:

No decent minded jury could have come to any other decision than that the defendant had attempted to deprave our literature.

Count Potocki of Montalk, to give the poet his name, wears long hair and a purple robe, and is a

¹ The *corpus delicti* was pirated: Reade's Cat., No. 2158. (Mus. Brit. S.S.A. 409.)

The Law of Obscene Libel

possible aspirant to the crown of Poland. He was consequently an ideal target for the school-boy bullying which is by no means rare in our administration of justice. An extremely well-written account of his experiences in prison entitled *Snobbery with Violence*¹ should be read by everyone interested in prison reform. Perhaps the unlucky de Montalk consoles himself with the fact that his appeal² has gone some way to establishing that:

It is a good defence to the charge that the publication of matter *prima facie* obscene was for the public good, as being necessary or advantageous to religion, science, literature or art, provided that the manner and extent of the publication does not exceed what the public good requires.

The attention of the Court had been drawn to a submission in Sir James Stephen's *Digest of the Criminal Law* to a very similar effect. This view has not been judicially accepted however in England.³

It may be well to note a case not altogether dissimilar of a young man who presented his poetic muse to the public by means of privately printed editions advertised by postal circulars. His work, *Guido and the Girls*, was a long poem in Spenserian stanzas describing the struggles of Aphrodite Ouranios

¹ Wishart 1932. See also *The Right Review* for Oct. 1936, *et seq.*

² *R. v. de Montalk*. The Court referred to *R. v. Barracough* (1906) with approval.

³ As to the Dominions see *Bremner v. Walker* (1885) 6 New S. Wales Rep. Law 276, 281.

The Banned Books of England

and Aphrodite Pandemos in the experience of the hero, and indulging in a good deal of rather Chaucerian abuse of priests and lawyers. He received kindly treatment from the Press though *The Times Literary Supplement* administered a gentle rebuke for coarseness. Encouraged by some measure of success he became longer and bolder and added a distinguished English peer (in very thin disguise) to his gallery of rogues. The authorities then decided to suppress the book and he was charged with publishing an obscene libel. Through misunderstandings (I think) the case went to assize instead of being disposed of in the Police Court. At Leeds on December 3, 1934,¹ Mr. Justice Goddard imposed a fine of £500. The poet was guilty of folly, perhaps, but not I believe of turpitude.

THE LEAGUE OF NATIONS

The English legal conception of "publication" was a matter on which Sir Archibald Bodkin was very proud at Geneva in 1923. The authors of *Keeping it Dark or the Censor's Handbook* tell us:

Later Sir Archibald made the very interesting observation that in England the phrase "traffic in obscene publications" had a pretty wide significance. It didn't only mean buying and selling, he said, and added, "As to lending and exchanging, I will tell the Conference that I

¹ *The Times*, December 4 and 6, 1934.

The Law of Obscene Libel

have got two people in prison now for having exchanged and lent and dealt with each other in indecencies, photographs, pictures, books, etc.

The Conference was a revival of the pre-War International Conference for the Suppression of Obscene Publications under the auspices of the League of Nations. Great Britain instigated the revival and France extended a special invitation to delegates.¹ This country sent Sir Archibald who quickly made his mark. To quote *Keeping It Dark* again:

When the delegates of the various countries concerned had all assembled, a Greek speaker tentatively suggested that it might be desirable in order that the Conference might know what it was talking about for them first to define the meaning of the word "obscene." The suggestion may sound sensible enough, but the assembled experts knew better.

Sir Archibald rose and made objection. He pointed out that "there is no definition of indecent or obscene in English Statute Law." The other delegates, feeling that officialdom would be lost if it had to justify itself unanimously supported Sir Archibald, and before the Conference proceeded any further it was resolved that "no definition was possible" of the matter on which the Conference was sitting.

The suppression of obscene literature is one of those numerous minor aims of the League of Nations in which it is only too likely to be more successful than

¹ Ernst and Seagle, *op. cit.*, page 195.

The Banned Books of England

in its major aims. In view of our present knowledge of the class of book that can be held to be "obscene" its activities want careful watching.

The above outline of the law of obscene libel will put the reader in a position to appreciate the significance of the latest important case of banning which will be dealt with in the next chapter. The two following chapters will broaden our view of the whole matter and further details of the law will be given in the criticism which constitutes Chapter v. The concluding chapter will put forward some suggestions regarding reform.

“THE SEXUAL IMPULSE” CASE

It is no accident that most of the books mentioned in the previous chapter are novels. Until lately it seemed that those responsible for instituting prosecutions against books were leaving serious scientific and educational work alone. It is true that Havelock Ellis's *Studies in the Psychology of Sex* had been condemned as (in the words of the indictment) “lewd, wicked, bawdy, scandalous and obscene.”¹ But that was in 1898, and the discreditable incident in our legal history seems to have been conveniently forgotten even by the police. The work has been readily obtainable in England for many years, and it has just been republished without expurgation or restriction of any kind.² It is a work now admitted on all hands to be a splendid contribution to the sum of human knowledge and to have resulted in the amelioration of a mass of human misery. It was possible to say, and people were, in fact, beginning to say: “Well, the law of obscenity may be very bad, but scientific works are left alone nowadays. If Radclyffe Hall or D. H. Lawrence have new knowledge or some new argument to put before the public, let them write a non-fiction book.” This attitude was very rough

¹ See Chapter IV.

² See Bibliography, item 9.

The Banned Books of England

on artistic literature, but susceptibility to artistic considerations is not our strong suit as a nation. And although, in an age when the novel is one of the most potent means of popular education, it was a handicap to writers who felt the need for a new outlook on certain subjects to say that they could not use this effective and far-reaching medium to express their views, it was at least possible to maintain that the communication of information and ideas on these subjects was not entirely blocked in spite of a few relatively unimportant cases (dealt with in Chapter III) which might have disturbed the equanimity of those who were content with this position.

This idea that scientific and educational works of non-fiction were becoming immune from prosecution has now been severely shaken by the condemnation of Edward Charles's book, *The Sexual Impulse*. Indeed, the idea is no longer tenable. That this work should have been added to the hidden literature of England is an event of first-rate importance. As far as the claim of the book to be considered a scientific and educational work there can be no doubt. Sixteen expert witnesses testified to it and based their testimony on actual experience in their vocations. These consisted of scientists of the highest eminence, sociological workers of undoubted repute, a lawyer with a large practice in matrimonial cases, and a general reader. All spoke to its scientific educational value, and some stated that it had a special, and even a unique

"The Sexual Impulse" Case

value in their particular line of work. In the opinion of the present writer the parts most objected to by the prosecution convey information which if widely disseminated would tend to remedy a vast amount of sexual misery, and do so in a manner and style which, though not perhaps above criticism on points of detail, is a vast improvement on anything that has been done so far.

Of course the book is a controversial one and it naturally evoked unfavourable criticism from some quarters. But even where opinion was adverse, indignation was none the less strong against the prosecution in all cases where the critic had any warrant in knowledge or reputation to speak. In the *Eugenics Review* for October 1935, Michael Fielding made the following pertinent remarks:

As these words are written, *The Sexual Impulse* by Mr. Edward Charles is the subject of a prosecution under the Obscenity Acts. It is more important then to state my opinion that it is a decent book than to make a formal review of its contents. Mr. Charles's views do not, it happens, agree with mine, and I am among those who prefer the consulting room to the printed page for imparting certain kinds of instruction. But what have my or anybody's prejudices to do with freedom of publication? I will not criticise this work because I believe that the liberty to express opinions that do not accord with Mr. Charles's is worthless if the right to proclaim his own opinions is denied to Mr. Charles.

The full designation of the book is *An Introduction*

The Banned Books of England

to the Study of the Psychology and Physiology and Bio-Chemistry of the Sex Impulse among Adults in Mental and Bodily Health by Edward Charles, with forewords by Professor Julian Huxley and Janet Chance. Its subject matter can be sorted into three parts.¹

The first is a philosophy based on the assertion that when early organisms forsook fission multiplication for sexual reproduction living matter suffered a trauma that we still feel today and can only heal in the sexual union which thus becomes the ultimate object of all human purpose. This theme is developed in a dogmatic style which is at times as incomprehensible as the Athanasian creed and, to me, as unconvincing.

The second part is a highly technical essay into physiology and bio-chemistry which can only be fully appreciated by the expert. The author clearly breaks new ground in his treatment of the correlation of contraceptive technique with coital position in a chapter of great interest to the layman.

The third part is an exposition of coital technique intended for the ordinary educated man and woman. This is a contribution to sexual literature of the

¹ I give my frank opinion of this book with diffidence and reservation. I have heard Edward Charles hailed as a second Havelock Ellis and I have heard his work condemned as rubbish. Anyone who at this stage says that he knows for certain either of these views to be true is very rash. The value of Charles's work has yet to be assessed by the judgement of his intellectual peers.

"The Sexual Impulse" Case

highest value. Norman Haire has said that descriptions of coitus in sex books leave the reader informed on every point except why anyone should ever want to do what is described. Descriptions of variety of coital position which I have read previously have always been either coldly medical and slightly ridiculous, or meretricious. Edward Charles deals with the matter *con amore* and in some passages (as for instance in a description of love-making in the open air) rises to considerable heights of poetic beauty. There is no doubt that a vast amount of matrimonial unhappiness and a great deal of the frigidity in women about which we hear so much is traceable to ignorance of these matters. Full and sympathetic instruction is a crying need. In *The Poison of Prudery*¹ Walter M. Gallichan says:

Intelligent savages, who instruct their adolescents in the duties of marriage, smile at the folly of civilised folk who leave everything erotic to chance or instinct, in the interest of "purity" and "morality." Such injuries as nuptial psychosis (bridal insanity), local physical lesions, and some of the uterine affections, would be almost unknown if candidates for matrimony received the necessary education.

The Sexual Impulse is a book which should, in my opinion, be in the hands of every couple whose union is physically unsatisfactory.

The following report of the prosecution of this

¹ Page 82.

The Banned Books of England

book, taken from the November 1935 and January 1936 numbers of *Plan*, will throw a great deal of light on the attitude of the law to books of this nature and the importance of that attitude in relation to literary liberty and the free circulation of ideas:

At the Westminster Police Court on October 1st, Mr. J. D. Cassels, K.C., opened the defence in the case against Boriswood Limited for publishing Edward Charles's *The Sexual Impulse*.

Outlining the history of the publication counsel said that the manuscript had been reported on favourably by the publisher's medical reader, Dr. Jensen of Westminster Hospital. Galley proofs were sent to Professor Julian Huxley and Mrs. Janet Chance, who contributed forewords, to Lord Horder who agreed with the main thesis, and to Dr. Voge of Edinburgh University who contributed some medical tables. The book was published at a guinea. Advertisements had appeared in *The British Medical Journal*, *The Journal of Medical Science* and *The Lancet*. The largest order received from any one bookseller was from Messrs. Lewis, the medical and scientific bookshop in Gower Street; a stock was also taken by Messrs. Simpkin Marshall, the largest wholesale booksellers in the country. He pointed out that the book was not a novel, but a contribution to the study of a subject which any human being was as much entitled to study as any other subject. The ordinary person would not understand one-tenth of the words used in many passages, and the glossary would not take him much further. On these facts Mr. Cassels contended that the book could not come within the accepted legal test of obscenity, i.e. "whether the tendency of the matter charged as obscenity is to deprave

“The Sexual Impulse” Case

and corrupt those whose minds are open to such immoral influences, and into whose hands such a publication may fall.”¹

In prosecutions of this type it has been laid down that evidence on the issue of obscenity is inadmissible² (the question being entirely one for the Court) but the defence were able to call expert witnesses with regard to the educational and scientific value of the work.

The first of these was Professor Julian Huxley, the Secretary of the Royal Zoological Society and a member of the Selection Committee of the Book Society. Cross-examined by Mr. E. B. Knight (prosecuting), he said he regarded the book as a study for medical students and intelligent members of the public.

Mr. Knight: Have not medical students their own books?—Most of the books on this subject are anatomical. There are few books dealing with the sexual impulse.

The Magistrate (Mr. A. Ronald Powell): Do you regard it as a text book?—No. It is a book of reference. It could be used as what is known in academic circles as a subsidiary reading.

The Magistrate: What contribution does it make to science?—The contribution is in the realm of psychology rather than in the realms of medicine and contraception.

The Magistrate: Do you consider that it should be put in the hands of anyone?—Anybody of the type to whom the book is addressed.

The Magistrate: Anyone who can pay a guinea for it! When you say in your foreword that the book is “action-provoking” to what actions do you refer?—I think that it would cause people to change their attitude to the sexual union.

¹ Lord Chief Justice Cockburn in *R. v. Hicklin* (1868).

² See previous chapter.

The Banned Books of England

The Magistrate: And carry out in the open air what is usually done in retirement?—"Open air" does not necessarily mean public.

Mr. Knight (referring to a passage on coitus during menstruation): Is not this dirty?—No. Although I am not prepared to agree with the writer it is a view that should be expressed.

The next witness was Dr. Maude Royden, of Eccleston Square Church. Without committing herself to all the expressions and theories in the book she thought it very valuable from the social point of view. Once sexual intercourse had ceased to be instinctive as it was among the animals, instruction was necessary. Books that were not sufficiently explicit did a great deal of harm.

Mr. Knight: In the case of unmarried people don't you think it is suggestive?

The Magistrate intimated that he thought the book contained no advocacy of immorality between unmarried people.

On October 16th Janet Chance stated that she was a authoress, a social worker, and the founder of a sex education centre. She considered the book served an educational purpose. Her sex education centre was intended for people who wanted elementary help in sexual matters. She had used the book at the centre and it was in the circulating library there.

Mr. Knight (referring to passages dealing with variety of coital position): Do you agree with these descriptions of passionate acrobatics?—Frank exposition is the only cure for sexual misery.

Mr. Knight (adverting to the passage on menstruation): Isn't it dirty and disgusting?—Not if it is spontaneously

"The Sexual Impulse" Case

and mutually desired by both parties as the book says. It is purely a matter of taste.

The Magistrate: Have you ever given the book to a member of the working class?—Yes, I judge according to the person's state of mind.

The Magistrate (referring to three verses, two of which were a quotation from Huxley's *Brave New World*): Do you consider them fit and decent for people of the working class to read?—Yes.

The Magistrate: Then I will read them. (After a pause) No, I won't read them. I don't think they are fit to be read.

Dr. Voge stated that he considered that the part of the book dealing with contraception broke new scientific ground. With regard to the rest he did not feel qualified to pass an opinion, but he appreciated an honest attempt to contribute ordered thought to a subject where chaotic thinking was common.

The Magistrate agreed to hear further evidence to the effect that the subjects to which objection had been taken (including coitus in the open air) had been dealt with in other books which had been published for years. One of the books referred to, Mr. Cassels said, had an introduction by a Metropolitan Magistrate (laughter). Mr. Powell, however, made it clear that, apart from questions of style, if he was convinced that the arguments in *The Sexual Impulse* were obscene, prior publication would not affect his decision.

This evidence was heard on October 23rd, in relation to *Sex in Marriage* by Groves, *Love's Coming of Age* by Edward Carpenter, and *Modern Marriage and Birth Control* by Dr. Griffith.

The Banned Books of England

Earlier in that day Dr. Jensen gave evidence that he was still of the same opinion as when he read the manuscript—that the book was of scientific and educational value.

Mr. Knight (referring to page 100): What does this mean?—It is an attempt to explode a lot of humbug that has been built up around chastity.

The Magistrate: Is not the whole thing a sneer at pre-nuptial chastity as being a convention, and an empty convention at that?—I think it means that because a woman has not been chaste she is not a lost soul. I agree with pre-nuptial chastity, but I do not think it damns a woman if she has not been chaste.

Mr. Knight (referring to another passage): Both parties would be fully exposed to one another: is there anything educational or scientific in that?—It is a position which some people find useful.

In giving his decision the Magistrate said that not long ago a book of this kind would have been banned altogether as dealing with a subject not mentioned in decent society. But times have changed and discussion and information are sought after. Books were published to satisfy that demand. Whether from the medical and psychological aspect that was a good thing, whether it was a good thing that any Tom, Dick or Harry should write a book of this kind for any person of any age or sex to read, was not for him to decide. The question for him was: "Was it an obscene book?" Once you take the view, as he did, from the legal standpoint, that books of this kind can and may be written, then, so long as a book on this subject was written in simple language, sincerely, soberly, and straightforwardly, it deserved to be treated and respected as of scientific and educational value. Once the

"The Sexual Impulse" Case

style became flippant, coarse, or salacious, or the book tended to the encouragement of practices which were indecent, immoral, or vicious, according to generally accepted opinion, it became obscene. Some of the book in question came within this category. The chapter on contraception was straightforward, but the chapter on the sexual union conformed to no accepted usage, descriptions were in poetic terms, and the language was consciously careless and regardless of convention. It tended to encourage practices which would certainly lead to indecency if they were not indecent in themselves. Many would laugh at these practices but he had been surprised that people had come into Court and treated them with seriousness. The defence had suggested that the book should be republished without this chapter, but there were other parts which were obscene: the poems on page 70 (previously referred to), page 68 contained a disgusting reference, and page 97 was coarse. The whole object seemed to be not to educate opinion but to shock the opinion of those yet to be educated. The whole book must go. No doubt it could be published but it would have to be rewritten. The appendices were unexceptionable.

He ordered the book to be destroyed. Mr. Morris, one of the directors of Boriswood Limited, and a salesman, were bound over for twelve months, and the firm was fined £50 with twenty guineas costs.

Counsel for the defence said that the other director of the firm, Mr. Greenwood, although he had not been summoned, wished to take equal responsibility. Counsel also gave notice of appeal.

THE appeal of Boriswood Ltd. against convictions for obscene publication in respect of Edward Charles's *The*

The Banned Books of England

Sexual Impulse and an order that the book should be destroyed was opened at the London Sessions House on December 10th, before Sir Percival Clarke and three lay justices.

The proceedings were a complete retrial of the case.

Mr. Eustace Fulton stated the case for the prosecution. Besides calling police evidence of publication he stated that Chapter viii of the book was particularly objected to. He urged that it was of no scientific or educational value, but contained a flippant suggestion that "fornication"¹ should take place in the open air, not to produce better children, but because it was more pleasant. He pointed out that the learned Magistrate in the Court below had also taken exception to page 68,² verses on pages 70³ and 97,⁴ and page 228.

Mr. J. D. Cassels, K.C., opened the case for the appellants by calling expert witnesses⁵ on the scientific and educational value of the book.

The first of these was Dr. Maude Royden of Eccleston Square Church. In the course of her work as a minister of religion she encountered a great deal of interest in sex

¹ Subsequently Counsel agreed that he used "fornication" as an equivalent for "sexual intercourse," and adopted the latter expression.

² The Magistrate referred to "a disgusting reference to a beautiful building."

³ A quotation from Charles's *Sand* and two from *Brave New World*.

⁴ A quotation from *John Brown's Body*, by Stephen Vincent Benet (Doubleday Doran, New York, 1928).

⁵ The number of expert witnesses who testified for the book in the course of the two trials was sixteen.

"The Sexual Impulse" Case

education and found that many marriages were wrecked by lack of it, often on the first night. *The Sexual Impulse* was valuable as a book she could recommend to young couples entering matrimony. Suitable books were rare. She could only think of two others, one by Helena Wright. She had no objection to the open air references.

The next witness was Professor Malinowski of the University of London, field anthropologist, and author of *The Sexual Life of Savages*, and other works.

He said that open discussion of problems of sex such as that contained in the book in question was necessary in the interests of marriage and the family, of which institutions he approved.

Mr. Fulton (cross-examining): Open discussion between school boys?—It is better than clandestine discussion.

Professor J. B. S. Haldane of the Universities of London, Oxford and Cambridge, and of the Royal Institution, author of several works on biology and genetics, said that the part of the book dealing with coital position was valuable, as a knowledge of variety was often necessary to avoid pain. He saw no educational value in the references to the open air.

Professor Haldane was continuing his evidence when an objection was raised by Counsel for the prosecution. By bending his knees the professor contrived to make his bulky form descend into the witness-box after the manner of a jack-in-the-box (laughter).

Mrs. Amabel Williams-Ellis, author of novels, and *How You Began* and *How You Are Made* (books for children), then testified to the educational value of *The Sexual Impulse*.

The Banned Books of England

Professor J. C. Flugel of the University of London and author of several works on psychology, said that the book discussed very important problems in an important way. Knowledge of positions was important psychologically and ignorance often caused psychological disturbances.

Mr. Fulton (referring to references to the open air): What is important in that?—It might open people's eyes to possibilities out of the routine.

Mrs. Seaton-Tiedeman said that in the light of fifty years' experience as a social worker, during the last twenty-three years of which she had had a special acquaintance with wrecked marriages as Honorary Secretary of the Divorce Law Reform Union, she considered the book of immense value for the preservation of marriage.

Mr. Cassels: Have you read Chapter VIII?—I consider it the most valuable in the book.

How many wrecked marriages go to pieces on the physical side?—About eighty-five per cent.

Cross-examined, the witness stated that it was good for married couples to have knowledge of various positions.

The Chairman: And find out the method which contains the most pleasure.

Robert Briffault, B.Sc., M.B., and Ch.B. of New Zealand, author of *The Mothers, Sin and Sex* and other works, said that the book was socially useful.

Mr. Fulton (cross-examining): What social use is there in descriptions of various positions?—A great deal of matrimonial unhappiness is due to monotony.

Lady Winstedt, a practising doctor, said that the book was valuable to a doctor, especially a gynaecologist,

"The Sexual Impulse" Case

particularly the passages on contraception, and on position (in relation to contraception and pain).

Professor Julian Huxley of the Universities of Oxford and London, Secretary of the Zoological Society, and writer on biology, said that at the present time any discussion of the physiology and psychology of intercourse was very valuable, but *The Sexual Impulse* was particularly valuable because it dealt with the experience and aspirations of the ordinary person in regard to marriage and was not only technical. It was psychologically and physiologically desirable that those contemplating marriage should know about varied position.

Mr. Fulton (cross-examining): Is it not likely to attract the seeker after a dirty book?—Not at the price.

The Chairman: The higher the price the spicier the book.

Carol Morrison, solicitor to the Women and Children's Protection Society, said that she had a large police court practice in matrimonial, affiliation, and nullity cases. Fifty per cent of failures in marriage were due to the lack of the knowledge contained in *The Sexual Impulse*. In most of the separation cases she had to deal with the women wanted to get away from their husbands because they found the sex act revolting.

Robert Nichols, the author, said that the book was valuable because it imparts information and induces reflection.

Mr. Fulton (bowing): I have too much respect for your poetry, Mr. Nichols, to cross-examine you.

Geoffrey Dunlop called as a general reader said he did not find the book suggestive.

The Banned Books of England

The Chairman: Did it not suggest various positions to you?

Janet Chance repeated the substance of her evidence in the Court below. She said that one of the visitors at her Sex Education Centre said that the passages in the book about the open air had had the effect of adding "a touch of romance" to her life.

Eldrid Frederick Hitchcock said he had been Warden of Toynbee Hall for eight years. The book would be valuable in the solution of the sex difficulties which arose not only among East Enders but among the residents of Toynbee themselves.

Mr. Cassels: Into whose hands would you put it?—I have a daughter of eighteen. I gave it her and she read it. She is the type of girl who . . . (Counsel for the prosecution objected and evidence was concluded).

Evidence was then taken of particulars of publication.

Mr. Cassels then addressed the Court on behalf of the appellants. In a powerful speech he stressed the points he had taken in the Court below. (At one point he rebuked a lay justice for yawning.)

He emphasised the scientific nature of the book. There was no word in it not used in decent society. It was entitled to be judged by the standards of today and not by those of fifty years ago. Yet it had been called a "dirty book," the publishers had been lined with the wretch who trundled pornographic postcards, and the learned Magistrate in the Court below had taken Chapter VIII to mean that there would be indecency on Hampstead Heath! Yet the author was entitled to criticise methods

“The Sexual Impulse” Case

of love-making and had done so in passages which were often of great beauty, as on page 150 for example. Fifty years hence this case would be regarded with scorn.

Chairman (smiling): You must not threaten us with the opinion of posterity, Mr. Cassels.

Mr. Cassels: But, since your lordship prompts the reference, I will say that fifty years hence this prosecution will be classed with heresy trials and witch burning.

It would be the height of hypocrisy, continued Mr. Cassels, pointing to the dock, if the Bench while continuing to punish poor people who were often led into crime by sexual ignorance, banned a book which gave them much needed information.

The case was then adjourned to give the Court time to read the parts of the book complained of.

On December 18th the Chairman announced that the Bench had decided to dismiss the appeal. It was not necessary to discuss in public the reasons that had led them to that decision.

On a representation by Mr. Cassels the binding over of the salesman was quashed as (although he had brought himself within the law) he did not know the contents of the book.

CHAPTER III

A WIDER VIEW

The Sexual Impulse has thus joined *Ulysses*, *The Well of Loneliness*, *Lady Chatterley's Lover* and other banned books of first class interest which are circulated among the intelligentsia, widely discussed, but not allowed to be sold in this country. There are few educated people who have not read one or other of these books and a knowledge of their contents is more or less taken for granted in intellectually alive circles. A highly lucrative trade in these books is conducted in Paris where the Englishman who desires a full knowledge of some of the most distinguished writers in his native tongue must perforce betake himself. This is an extraordinary state of affairs and one which bears some analogy to that obtaining in France shortly before the Revolution of 1789 when a great many of the books written for enlightened Frenchmen had to be published in Switzerland because of the French censorship.

With the legal decisions involved there is no need to quarrel. Lord Cockburn's definition of obscenity which is the criterion accepted by the courts is so wide that almost any writing about sex might reasonably be held to come within it. Of what book about sexual matters can it with certainty be said that it

A Wider View

has no tendency "to deprave and corrupt those whose minds are open to such immoral influences"? And what sort of publication is there that may not fall into the hands of such persons? As Frank Whitworth wittily remarks: "And so a harmless brief to defend a bigamist may yet land some innocent solicitor into trouble, as the mere mention of bigamy might corrupt some low-minded fellow."¹

Of course all books that fall into this very wide net are not prosecuted and for that both author and public should be duly thankful. But a law which is only invoked arbitrarily and spasmodically ceases to be law in the true sense of the word. It becomes tyranny and the result is anarchy. If murderers were only prosecuted when the crime particularly annoyed the police, the Bishop of London, James Douglas, or the old lady next door, we should have an analogous state of affairs as regards personal violence although here those who escaped would not engage our sympathy.

HISTORY

To view this state of affairs against its background of social history is an interesting exercise. At the beginning of the eighteenth century the masses in this country were illiterate and were governed by an educated and highly cultivated aristocracy. Little or

¹ In *The Law Journal* for December 14, 1935.

The Banned Books of England

nothing was heard of the law of obscenity. Is it fantastic to connect the awakening of interest in this matter on the part of the privileged classes and the courts of law towards the end of the century with the growing literacy of the people? This interest and consequent legal developments accelerated during the nineteenth century until the Cockburn judgment under which we now groan, beat the Compulsory Education Act of 1870 by a short head. This restrictive tendency received plenty of moral support from the Methodism which spread so rapidly among the submerged classes in the eighteenth century. An oppressed populace and especially a populace oppressed by a sexually licentious governing class (as were the gentry of the eighteenth century), is always a good breeding ground for Puritanism. Compare the difference of attitude to sexual matters between Richardson, Goldsmith and Johnson on the one hand and Fielding, Sterne and Gibbon on the other. To Richardson the height of virtue is exemplified by a servant girl who retains her virginity until her master marries her. Gibbon asks: "Shall I blush to translate what a bishop was not ashamed to write?" It is the difference in attitude between the social classes from which they sprang. We have a similar situation in the early centuries of our era. Many of the early Christians were recruited from the slave population of the Roman Empire. It was these unfortunate underdogs, sexually as well as economically exploited, who lent a ready

A Wider View

ear to the teaching of the austere and anti-sexual Paul rather than of the more human Peter. It was they who grafted on to the new faith an anti-sex bias which it still retained after their masters had established it as a convenient instrument of government. The unfortunate results of this circumstance were aggravated by the fact that while Christianity, like all other religions, claims to control the sexual lives of its adherents, it has too often shirked the responsibility of positive instruction in sexual matters. In the Protestant branches of the faith, where Pauline ideas are most prominent, even the leaders were frequently sexually uninformed, and so the blind led the blind. It is becoming increasingly realised that truth and virtue can no more be built on ignorance in sexual matters than in other spheres of conduct.

But the Puritanism of the eighteenth century had become more formidable in the nineteenth. The Children of the Industrial Revolution, they whom it raised to varying degrees of wealth and power, carried the cultural marks of their origin with them. They became a puritanical middle class whose influence has spread over England like a damp and suffocating blanket. As the country became richer they made it uglier. If the people were to have more leisure as time went on they saw to it that dulness rather than gaiety should prevail. Amid all the fine talk about liberty and freedom of speech they steadily supported legal encroachments on the free circulation of ideas in

The Banned Books of England

regard to sexual matters. The situation was worsened by educational changes. Since the Renaissance until recently the deficiencies of our religious leaders in the matter of imparting sexual knowledge and a sane attitude to sex were to some extent remedied by the knowledge of Classical literature that was a normal and important part of the education of the governing classes. It is unlikely that anyone acquainted with Ovid's *Ars Amatoria*, the *Satyricon* of Petronius, or the *Greek Anthology* would be seriously shocked at, or get very excited about, anything Edward Charles has written. An eighteenth century gentleman might have been persuaded that certain books were bad for the common people who were beginning to learn to read; but he would at least have had some understanding of the issues involved. The decline of Classical education (whatever may be claimed in its favour in other respects) has had however the unfortunate result that our judges, magistrates, lawyers, Home Secretaries, and Police Commissioners are frequently as ignorant and as stupid about sexual matters as the people whose morals they undertake to protect. It may be very deplorable that an enlightened governing class should withhold knowledge from the masses but the system will work within limits; things are infinitely worse when the shepherds are as silly as the sheep.

Voluntary societies were formed to organise puritanical opinion and one of their principal functions was to promote the enforcement of the law of obscenity

A Wider View

in regard to books. The Society for the Suppression of Vice was formed in 1802, the Duke of Argyll's Society for the Encouragement of Pure Literature was flourishing in the sixties, and the National Vigilance Association took up the good work in 1885. This association is still in existence, but now-a-days it appears to confine its activities in the main to the protection of young girls from undesirable influences.

THE PUBLIC MORALITY COUNCIL

The modern counterpart of the nineteenth century "purity" society is the Public Morality Council. In a letter to *The Times* for December 6, 1935, the Bishop of London, Lord Mamhead, and a Mr. Thomas Ogden, made a public appeal for funds to finance this body. They stated that the Council estimated to spend £3,000 during 1936 on what they described as its "delicate task." This was stated to include "the suppression of indecent publications," "the closing of disorderly houses and night clubs" and "the prevention of improper conduct in London's open spaces." The Council, the public also learnt, had been encouraged by receiving expressions of appreciation from several Home Secretaries, local governing and licensing authorities, and police magistrates.

The Bishop of London is President and Chairman of the Council and the other two signatories to the

The Banned Books of England

letter are its honorary treasurers. The Vice Presidents include the Bishop of Southwark, most of the suffragan bishops of the London district, the leaders of the Salvation Army, and Lord Dickinson. Besides the President the Executive Committee includes Commissioner Adelaide Cox and the Dowager Lady Nunburnholme. A handbill issued by the Council advertises the fact that in June 1934 the Queen was graciously pleased to accept a Report of the work of the Council with an expression of great interest and approval. The printed reports of the Council are marked "Private" but the body appears to be of sufficient importance to make its activities a matter of public interest. When these activities figure in the news they are generally treated as humorous items and undoubtedly some of them, such as the Bishop of London's campaign against semi-nudity on the stage, properly fall into that category. That campaign evoked a spirited letter from Marie Tempest in *The Times* of January 5, 1935, which concluded:

I am not entirely without feelings of decency; there are things I do object to (I admit to feeling a little old-fashioned at times), but I do protest strongly at any attempt to revive the activities of the Prudes on the Prowl, the spying of the Stigginses, and the chortling of the Chadbands.

But in other directions the work of the Council has more serious implications and is deserving of further consideration.

A Wider View

To begin with "the suppression of indecent publications," *The Sexual Impulse* prosecution has made it abundantly clear that the operation of the law of obscene publication is not confined to "feely post-cards" and "dirty books" but that even today it may be invoked, and successfully invoked, against a work which an array of eminent witnesses is prepared to testify to be of considerable scientific, educational, and social value. The Council's activities in this respect may therefore have a bearing on that free circulation of ideas which is the very life-blood of an intellectually healthy society. The *Star* of March 29, 1934, reports an address of the Bishop of London in which he boasted twenty-two books sent to the Home Office by the Council. In the same year the Council was associated with two deputations to the Home Secretary on this subject, the first led by the Bishop of London and the second composed of Members of Parliament; and a small Committee of Members of Parliament in sympathy with the Council was also formed. Special attention was given to the sale of the cheaper publications to which exception was taken. The Council attributes to these steps what it regards as an improvement in the attitude of the authorities and records a considerable number of successful prosecutions. The Council regard the Irish Free State censorship without disfavour and have circulated to interested Members of Parliament an outline of Italian law and regulation regarding publications. Further

The Banned Books of England

action is to be postponed pending a Conference of sympathetic bodies and a more exhaustive examination of recent publications. These facts should disturb the complacency of many who regard the greater freedom of discussion in regard to sexual matters which has grown up since the war, and which has done so much to make for a sane and healthy attitude towards that subject, as the effective operation of some inevitable law of progress. Here is a well organised and highly influential body working on lines which may well set back the clock and result in a return to what Richard Aldington has called: "the false idealities of the last age." If it be argued that the Council is small and its sphere of influence, though distinguished, narrow, I would ask what body working for cultural liberty can expect to spend £3,000 a year and organise Members of Parliament to further its views?

In regard to "disorderly houses" and prostitution generally the Council are very active. Visits of inspection are paid to premises which are the subject of complaint and the streets patrolled by representatives of the Council. Hundreds of cases are reported to the police and prosecutions frequently follow. It is gratifying to note that in respect of female soliciting action is only taken where acts of annoyance or disorderly conduct are apparent. All cases of importuning by male persons are however reported. This seems to display a regrettable attitude to an offence in respect

A Wider View

of which conviction can be obtained on the evidence of one policeman and the savage sentence of six months' hard labour can be, and often is, inflicted on people who ought to be sent to psychological clinics.

It is clear that this work, especially that relating to street offences, must be carried on in very close association with the police. Now the question whether supplementation of police activities by private persons and unofficial organisations is desirable is a difficult one and each case must be decided on its merits. Clearly the activities of the societies for the prevention of cruelty to children and to animals fall on one side of a dividing line, and it was generally felt quite recently that the formation of a private body to supply additional protection to property fell on the other. The police themselves discourage unofficial co-operation in relation to motoring offences. It is suggested that such regulation of sexual conduct as is necessary in the public interest is one of those spheres of activity which should be left exclusively to the police in the execution of their ordinary duty. In the first place this work must tend to have a demoralising influence on those engaged on it, whether they be specially detailed police or private persons. This is borne out by experience of the corruption and interference which has attended the activities of the "vice squads," "vice societies" and "smut-hounds" of America—to use the vigorous trans-Atlantic nomenclature. One

The Banned Books of England

need have no sympathy with commercialised sexuality to see that in this sphere the activities of a private and semi-secret Society, unamenable to Parliamentary control and inquiry, may in certain cases constitute a serious menace to the liberty of the subject. This is particularly so since the Fen Ditton case in December 1930 made it clear that a "brothel" in the legal sense need not be a place run for gain.

The patrolling however is not solely concerned with prostitution. It plays its part in "the prevention of improper conduct in London's open spaces" where it affects those who use these places for their love-making because they have nowhere else to go. One is reminded of William Plomer's *Vagabond Love*:

They made love under bridges, lacking beds,
And engines whistled them a bridal song,
A sudden bull's-eye showed them touching heads,
Policemen told them they were doing wrong.

It is a little difficult to sympathise with people who, for motives however good, increase this sort of interference. I have never been quite sure about Fabianism since I learned that Lord Olivier investigated the morals of the population at night with an electric torch on Hampstead Heath.¹

The interests of the Public Morality Council are very wide. It was concerned with Lord Dawson's

¹ See *A Lawyer's Note Book*, page 154.

A Wider View

Bill to restrict the sale of contraceptives¹ which passed the House of Lords and with the attempt to bring non-inflammable films under the censorship, and is now associated with the agitation to bring clubs (in practice working-men's clubs) under stricter control. Public opinion in the main regards this Council as a harmless and slightly humorous set of busy-bodies. There is however a suggestion of reactionary efficiency about some aspects of their work, and even a flavour of Fascism, which should give lovers of liberty reason to pause. At any rate it is a valuable example of the type of mentality from which the law of obscene libel draws its moral support, and it is clear that the forces supporting that law and hoping to extend its effectiveness are by no means negligible.

Sydney Smith voiced a fundamental objection to all societies of this type:

It is hardly possible that a society for the suppression of vice can ever be kept within bounds of good sense and moderation. . . . Beginning with the best intentions in the world, such societies must, in all probability, degenerate into a receptacle for every species of tittle-tattle, impertinence and malice. Men whose trade is rat-catching love to catch rats; the bug destroyer seizes upon the bug with delight; and the suppressor is gratified by finding his vice.

¹ It was during the debate on February 13, 1934, that the Bishop of London said, "I would like to make a bonfire of them and dance round it."

The Banned Books of England

THE LIBRARIES

The "Purity" societies have always worked hand in glove with the circulating libraries. These libraries organised among themselves a definite censorship which did not spare *Jude the Obscure* (1895), *Ann Veronica* (1909), or Hall Caine's *The Woman Thou Gavest Me* (1913), among scores of other books. George Moore, Hardy, Bennett, Wells, Shaw, Sir Oliver Lodge and many others protested loudly against this system but it is still a power to be reckoned with, and banning by the circulating libraries is a serious blow to any but the most firmly established author.

But far more serious is the much narrower censorship exercised over the Public Libraries, which are the usual source of serious reading matter for the bulk of the population. In the vast majority of cases no books dealing with sexual matters are allowed on the shelves or, at the best, only those by the most orthodox and old-fashioned writers. It is difficult to see why borrowers from public libraries (who contribute to the cost of books through the rates) should not enjoy the same freedom of reading as those who are able to afford to buy books or expensive library subscriptions. Everyone has an equal right even in law to read any book until it has been condemned in open court. The frequent assumption by library committees of rights of censorship over a large section of the

A Wider View

reading public is fraught with danger, as these bodies are too often composed of persons who fail to appreciate the social advantages attendant on the free and open discussion of sexual subjects which is characteristic of modern literature. It is not the business of these Committees to air their views as to what is "immoral", "erotic" or "pornographic" as they so often do. These are adjectives on which opinions differ sharply. Demand should be the sole criterion of selection. The function of a Public Library Committee is simply to find out what the users of the library want to read and to do their best to meet the demand with the money available. Clamour from reactionary quarters would undoubtedly follow the adoption of this criterion. The proper answer is: "The books of which you complain are here for the same reason as they are in the book-shops and the circulating libraries—because people want to read them. Their morality is the concern of the critic. Allow me to call your attention to books in which *your* point of view is adequately represented."

An example will illustrate the present unsatisfactory situation. One day I travelled from a West-end shop to the Hampstead Public Library. In the book department of the former establishment there is an excellent stall devoted to sexual and similar subjects. The latter institution shows no lack of funds and houses 100,000 volumes, but in the lending department Dr.

The Banned Books of England

Marie Stopes is represented only by her works on *plant* life, and the card index under "Sex", shows half-a-dozen books published since 1919! So generally accepted and widely read a work as Edward Carpenter's *Love's Coming of Age* is missing, and there is no unbawdlerised edition of Walt Whitman's poems. Apparently the man who was *par excellence* the poet of democracy is not considered quite suitable for the people.

If we pass from libraries intended to meet popular needs to those which cater for scholars the state of affairs is still far from satisfactory. Unobtrusive censorship is often met with, and there is a very prevalent idea that once a book has been the subject of judicial condemnation it is the duty of every library to destroy any copies they may have or at any rate not to issue them to readers. It is respectfully submitted that this is an exaggerated and mistaken view of the law as it stands. If an order for destruction is made under Lord Campbell's Act it refers only to the stock of books to which the Court addresses its attention. If a publisher is convicted of publishing an obscene libel the circumstances of the publication are an ingredient of the offence. Publication in other circumstances may be clear of the law. Of course if a library "published" a legally banned book by circulating it or issuing it in circumstances which resembled those condemned by the Court an aggravated offence would be committed. But it is inconceivable that the

A Wider View

issue of such a book to members of the learned professions and to *bona fide* scholars would be regarded as an offence "proper to be prosecuted" (to use the words in Lord Campbell's Act to which we shall refer later) if reasonable precautions were taken to see that the book did not fall into the hands of those whom the law considers open to the "corruption" it is designed to prevent.

One would have supposed that the British Museum Reading Room would have been free from the problems of censorship. But this is not so. Many books are removed from the public catalogue for reasons among which "obscenity" is one. Blasphemy, betrayal of Masonic secrets, and unseemly truthfulness about royal families are others. Both Edward Carpenter and Havelock Ellis had trouble because their books were treated in this way.¹ Even books which appear on the Catalogue are not all freely available. When preparing this book I sent for Knowlton's *Fruits of Philosophy*. It was not delivered to me until I had convinced a blushing young gentleman, who interviewed me with the utmost courtesy, that I was a fit and proper person to see it.

Dr. Norman Himes when dealing with the difficulties that beset him in compiling his monumental work on contraception says in the Introduction to the first volume:

Even the 'British Museum has a special cabinet for

¹ Cf. *A Lawyer's Note Book*, page 121.

The Banned Books of England

certain books; and to secure access to these requires not only serious purpose but tact, patience, and persistence. Some amusing stories could be related of these experiences.

He finds the libraries of his own country no better. In the same introduction he says:

All the chief American libraries, whether the Library of Congress, the New York Public Library, or the Harvard and Yale libraries, or such medical libraries as that of the New York Academy of Medicine, the Boston Medical Library, the Surgeon General's Library, etc., are definitely limited in source material. Speaking generally, American libraries possess few works on the sexual life of peoples in various cultures at different times. My personal private collection at considerable expense has helped. Source material, even when possessed by American libraries, is sometimes intentionally left uncatalogued. This is true more especially of the public libraries. Librarians of such institutions not infrequently find that they must, in deference to public opinion, restrict the circulation of even the most innocuous books. In the instance of books of genuine scientific value, failure to catalogue them in the index generally available to the public sometimes seriously interferes with scientific work. Yet responsibility lies more perhaps with the community than with the librarian. Few have had direct access to the files in the Director's Office at the Boston Public Libraries, of "books not in the library."

In fact all the great libraries of the world contain books which are considered (rightly or wrongly) unsuitable for general circulation on the ground of eroticism. Even the Vatican Library has its "Hell." A

A Wider View

similar section of the Bibliothèque Nationale in Paris was created by Napoleon on the Vatican model. The catalogue¹ contains many books in English including John Wilkes's *Essay on Women*. A similar catalogue² covering the great libraries and collections of England and the Continent has just appeared. It contains no less than 5,061 items which range from the shoddiest pornography to classics of literature and the work of scientists like Iwan Bloch and Magnus Hirschfeld. Dr. Hirschfeld's own library at the Institut für Sexualwissenschaft in Berlin was raided by the Nazis and 12,000 volumes publicly burned in May 1933. The *Encyclopædia Sexualis* relates that Hirschfeld witnessed the destruction a few days afterwards on the screen of a Paris cinema.

THE IRISH FREE STATE

It is only necessary to cross the Irish Channel to find a suppression of literature far worse than that obtaining here. Under the Censorship of Publications Act, 1929, a Censorship of Publications Board was set up in the Irish Free State. Either on its own initiative or acting on a complaint referred to it by the Minister of Justice the Board may report to the Minister with regard to any book or a particular edition of a book

¹ See Bibliography item 38. The preface quotes the great Charles Nodier—"je n'ai jamais lu un mauvais livre, mais j'avoue franchement que j'en ai souvent consulté quelques-uns avec profit."

² See Bibliography item 39.

The Banned Books of England

that it is "in its general tendency indecent or obscene and should for that reason be prohibited or that in the opinion of the Board such book or edition advocates the unnatural prevention of conception or the procurement of abortion or miscarriage or the use of any method, treatment or appliance for the purpose of such prevention or such miscarriage and should for that reason be prohibited." The Board may report in a like manner on the recent issues of any newspaper or periodical, the devoting of "an unduly large proportion of space to the publication of matter relating to crime" being an additional ground of report. On receipt of such a report from the Board the Minister may issue a "prohibition order" forbidding importation, sale, or distribution of the book or edition, or of subsequent numbers of the periodical. Infringement of the order is a criminal offence. A special part of the Act makes the printing, publishing, sale or distribution of birth control advocacy (whether prohibited or not) an offence. The Minister may however issue permits to any person to do anything prohibited under the foregoing provisions subject to such conditions and limitations as he may think fit to impose. Statutory Rules and Orders No. 32 (as amended by No. 58) of 1930 regulate the manner of preferring complaints to the Minister. A copy of the book complained of (or three issues of a periodical) must accompany the complaint. Reports of judicial proceedings are severely restricted by the Act except

A Wider View

so far as volumes wholly devoted to *bona fide* law reporting are concerned.

The provisions of this Act are put into force in a very widespread manner. The current *Register of Prohibited Publications* published under the Act contains 695 books and 11 periodicals. The books are drawn from every class of literature and no very consistent policy seems to be followed. It is impossible to understand why some books are included and others not. The second-hand catalogues of a popular English circulating library are plentifully sprinkled with asterisks denoting "Banned in the Irish Free State." The Library takes if anything a conservative view of English taste, and so we have the position that novels and works of popular non-fiction which pass without any comment in this country cannot be obtained in the Free State. All books on birth control are of course banned except perhaps a few which may meet with Roman Catholic approval,¹ e.g. *The Rhythm*. When I meet educated men from Ireland in this country they are generally considering means of getting some banned book or other into their native land. The process does not seem to be difficult. The extent of the censorship can be judged from the fact that H. G. Wells's *The Work, Wealth and Happiness of Mankind* is banned.

It must be a bitter disappointment to those who out of love of liberty supported the claim of the Irish to

¹ See *Roman Catholics and Birth Control*, by Marie Stopes.

The Banned Books of England

independence to see their newly-gained freedom put to such reactionary ends. On the other hand the mass of the people in the south of Ireland adhere to a faith which leaves moral guidance to priests and requires the layman to be content with so much knowledge as they consider good for him. This is a tenable view and one which will work within limits, though history abounds with examples which illustrate how narrow those limits are. Certainly the Roman Catholic hierarchy is as a whole adequately informed on sexual science. The blind do not lead the blind as is so often the case among other denominations. It is none of the purpose of this book to protest against the Irish Act; that is the concern of Irishmen and Irishwomen. But the conception of society on which their system is based is one which was definitely rejected by this country four hundred years ago. It is however the purpose of this book to protest against the introduction into our national life by back-stair methods of an attitude to sexual ideas which is only distinguishable from the Roman Catholic one by reason of its being muddle-headed, hypocritical and haphazard.

OTHER DOMINIONS

The other Dominions follow roughly English practice, but as they rely on import trade to a very large extent for their books the powers of the Customs assume proportionately larger importance. In Canada for

A Wider View

instance Item 1201 of the Canadian Customs Tariff prohibits the importation of "books, printed papers, drawings, paintings, prints, photographs or representations of any kind of a treasonable, seditious, immoral or indecent character." So far as immorality and indecency are concerned these powers are mainly used to exclude palpable pornography and books that have been banned in other countries. There seems however to be a definite set against nudist literature and one or two novels, of no great merit, which circulate here are excluded.¹ South Africa forbids the importation of:

Goods which are indecent or obscene or on any ground whatsoever objectionable; in the event of any question arising as to whether any goods are indecent or obscene or objectionable the decision of the Minister of the Interior shall be final: Provided that in respect of printed, engraved, lithographic and photographic matter the decision shall be given after consultation with the Board of Censors appointed in terms of sub-section (1) of section *two* of the Entertainments (Censorship) Act, 1931 (Act No. 28 of 1931).

It is of interest to note the Post Office Act No. 10 of 1911 prohibits the mailing of any article:

which has any profane, blasphemous, indecent, obscene, offensive, or libellous matter on the outside thereof or any indecent or obscene matter enclosed therein.

¹ That classic of Leicester Square *The Awful Disclosures of Maria Monk* is prohibited, perhaps because the scene of these "disclosures" (of which we celebrated the centenary in 1936) is Montreal. Here we may have the last of the "witchcraft confessions" and in the authoress a pale and latter-day Madeleine Bavent.

The Banned Books of England

The Australian Customs Act prohibits the importation, *inter alia*, of blasphemous, indecent and obscene works or articles. It has been administered in a very restrictive manner especially since 1933. Some hundred political works are excluded as well as Defoe's *Moll Flanders* and cheap editions of the *Decamerone*. A Book Censorship Abolition League has been formed whose immediate object is to obtain the free entry of all political works that circulate freely in Great Britain. Ultimately it is hoped to take the matter out of the arbitrary and capricious control of the Minister for Customs.¹ In New Zealand on the other hand a very liberal attitude prevails. Section 46 of the Customs Act, 1913, prohibits the importation of all indecent documents or articles within the meaning of the Indecent Publications Act, 1910. The latter Act contains the following clause:

In determining whether any document or other matter is indecent within the meaning of this Act the Magistrate shall take into consideration not merely the nature of that document or matter itself, but also the nature and circumstances of the act done by the defendant with respect thereto, and the purpose with which the act was done, and the literary, scientific, or artistic merit or importance of the document or matter; and no document or matter shall be held to be indecent unless, having regard to these and all other relevant considerations, the Magistrate is of opinion that the act of the defendant was of an immoral or mischievous tendency.

¹ *Manchester Guardian*, April 24, 1936.

COMPARISON WITH AMERICA

THE comparison of American with English libraries in the last chapter will suggest a wider survey of American practice in relation to our subject. Community of language and legal origins alone is a sufficient reason for including a glance across the Atlantic in any account of the freedom of English literature.

AMERICAN LAW

English common law as it stood at the Revolution was taken over into American law. There seems to be some doubt whether the offence of obscene libel was part of this heritage. At any rate little was heard of it till the beginning of the nineteenth century. But in the case of the *Commonwealth of Pennsylvania v. Sharpless* in 1815 certain yeomen, "being evil-disposed persons," were charged on indictment with exhibiting in a private house "a certain lewd, wicked, scandalous, infamous and obscene painting, representing a man in an obscene, impudent and indecent posture with a woman, to the manifest corruption and subversion of youth, and other citizens of this commonwealth, to the evil example of others in like case offending,

The Banned Books of England

and against the peace and dignity of the commonwealth of Pennsylvania.”¹ The common law was strengthened by Statute in some of the States—Vermont (1821), Massachusetts (before 1835) and Connecticut (1834). There was also Federal legislation against the importation of indecent pictures and articles (1842) and against the transmission of obscene books and pictures by mail (1865). The latter Act was strengthened by an amending Act in 1872. The making of “obscene” matter unmailable is the weapon of the Federal Government as distinct from the various State Governments; and it is an important one.² We have a similar provision in England though it has not played nearly so important a part in the suppression of “obscenity.” Section 16 of the Post Office Act of 1908 provides for preventing the sending of “indecent or obscene” matter through the post and Section 63 makes the sending of such matter or an attempt thereat a criminal offence. The sections cover packages which contain matter objected to even if sealed and outwardly in order, as well as those externally objectionable. The posting of advertisements of obscene matter, not themselves obscene, offends against the statute (*R. v. de Marny*—1907).

¹ *Anthony Comstock Roundsman of the Lord*, by Heywood Brown and Margaret Leed, for this and much that follows.

² The Courts have held that “obscene” matter may be mailed if the tendency is not to corrupt the addressee. E.g. doctors may send “obscene” letters to their patients in certain circumstances. Schroeder’s “*Obscene Literature and Constitutional Law*, page 333.

Comparison with America

Telephones and cinematograph films were brought into the picture by the Post Office (Amendment) Act, 1935. In *Do we need a Censor?* Lord Brentford, the notorious "Jix" who was Home Secretary for many years, makes it clear that the Home Secretary's warrant to open letters in the post is used to enforce these provisions. This pamphlet is an unimaginative exposition of the orthodox point of view and is much concerned about the "young" and "public morality." Provisions against "obscenity" are easily slipped into statutes because the average person supposes that they concern "dirty books" and "feely postcards" and has no idea that reputable literature and the principles of freedom of thought and expression may be involved. Soon after the War a provision was introduced into a Government Bill which would have extended police rights of search and seizure of "obscene" matter similar to those given in Lord Campbell's Act to private houses where no question of sale or distribution was involved. Had it been passed no one's library would have been safe, but happily the provision was deleted. The fact that it was put forward is indicative of the mind of authority on these questions.

The sensitiveness of the American judges, and particularly the Federal judges, to English legal opinion caused the American Courts to follow English developments very closely. They readily turned to the Cockburn judgment after 1868 to help them to define the terms "lewd," "lascivious," "in-

The Banned Books of England

decent," and "obscene" as used in statutes and common law indictments. They even went further by permitting indictments charging that books were too obscene to be put on the records of the Court—a procedure which took the matter out of the jury's hands. In the Bradlaugh case (dealt with in Chapter v) it was established in English law that the words complained of must appear in the indictment.

In this atmosphere the game of literary "smut-hunting" developed with trans-Atlantic exuberance. Even the work of that great figure in American literature, Walt Whitman, was attacked. At one time *Leaves of Grass* was banned in the U.S.A. It has never been molested in this country although in an introduction to the *World's Classics* edition (1920) Ernest de Selincourt informs us that "if we remove the most offending passages, his true message stands out more clearly than in his full text." In 1865 Whitman was actually dismissed from a post in the Department of the Interior because he was "the author of an indecent book." Chief Secretary Mr. James Harlan, the head of the Department, appears to have used his position to inspect Whitman's desk and found there an annotated copy of *Leaves of Grass* at that time out of print.¹

In 1907 Dr. C. W. Malchow, President of the Physicians and Surgeons Club of Minneapolis, was

¹ *Walt Whitman*, by John Addington Symonds (1893), page xxxi.

Comparison with America

sent to gaol for selling through the mails his book *The Sexual Life*. The work had been praised by educational and medical journals and strongly commended by a meeting of Methodist ministers. President Roosevelt, however, on being asked by members of Congress for a pardon expressed an amazed regret that he could not lengthen the sentence. Swedenborg's *Conjugal Love* was banned in Philadelphia in 1909. The same year a magazine was excluded from the mails because, among other things, it contained an advertisement for Sanger's *History of Prostitution* which according to the official concerned "from its very name is clearly indecent." Sometimes the purity fanatics were hoist on their own petard as when *From the Ball-Room to Hell*, an improving polemic against dancing, of some twelve years' popularity, was banned from the mails.¹

ANTHONY COMSTOCK

The protagonist in this drama of ideologies was the notorious Anthony Comstock. He was the embodiment of Protestant Christianity at its narrowest and cruelest—a fanatic to whom everything was obscene that savoured of sex. He started by making arrests under a New York Act passed in the year of the Cockburn judgement. By 1872 he was working for

¹ For the cases in this paragraph see Schroeder's "*Obscene Literature and Constitutional Law*, pages 68, 61 and 63.

The Banned Books of England

the Young Men's Christian Association which had set up a Committee for the Suppression of Vice. The next year he managed to get through Congress the famous Comstock Act. This Act greatly strengthened the existing powers of exclusion of "obscene" matter from the mails and made the advertising of "obscenity" an offence. It was followed by an epidemic of State legislation until now there are only two States in the Union without "obscenity" statutes. Comstock was appointed a special agent of the Post Office for enforcing the Federal Act—a position which he held for the rest of his life. The Committee of the Y.M.C.A. became the Society for the Suppression of Vice. It should be noted that this Society post-dated its English namesake by seven decades. Indeed Comstock did little more than add American efficiency and pep to the discoveries of English prudery. During a long and energetic life he waged a relentless campaign against what he deemed "obscenity." His professed criterion was possible harm to a child. Neither literature nor art was spared. As *agent provocateur*, he boasted the number of his victims driven to suicide. In 1905 he attacked *Mrs. Warren's Profession* as "one of Bernard Shaw's filthy productions": Shaw retaliated by adding the word "comstockery" to the Anglo-Saxon tongue. In 1906 Schroeder^x wrote of this Titan:

Mr. Comstock is also an unconscious witness to the harmlessness of obscenities. In a recent report he informs

^x Repeated *op. cit.*, page 103.

Comparison with America

us that for thirty years he has "stood at the mouth of the sewer," searching for and devouring "obscenity" for a salary; and yet he claims that this lucrative delving in "filth" has left him, or made him, so much purer than all the rest of humanity that they cannot be trusted to choose their own literature and art until it has been expurgated by him.

It is perhaps worthy of note that in 1915, the year of his death, Comstock who was by then becoming a figure of fun to the younger generation of Americans was appointed by President Wilson to represent the United States at the International Purity Congress at the San Francisco Exhibition. A few years after President Wilson was hailed as the prophet of a new world of peace, progress and enlightenment. We who, in a re-arming world, take the full and bitter measure of his futility and failure, may well ask ourselves whether any man who is allied to the forces of obscurantism and darkness in one sphere of human interest can succeed as the apostle of light in another.

MARGARET SANGER

In the year of his death Comstock had a brush with a woman who was to go a long way towards undoing his life's work. He had had the words "for the prevention of conception" inserted into the Act of 1873, and had succeeded in making the conveying of contraceptive information an offence in New York State.

The Banned Books of England

Many other States have similar enactments. Comstock frequently used the word "abortionist" to cover dealers in contraceptives.

In 1912 Margaret Sanger woke to a sudden realisation of the now familiar horrors that ensue from the withholding of contraceptive advice from the poorer classes. She journeyed to Paris to obtain the latest information on technique and henceforth the imparting of that information to her fellow countrywomen became her life-work. In her book *My Fight for Birth Control*¹ she writes:

It was at this time I began to realise that Anthony Comstock was alive and active. His stunted neurotic nature and savage methods of attack had ruined thousands of women's lives. He had indirectly caused the death of untold thousands. He and a weak-kneed Congress, which, through a trick, in 1873 had given him the power of an autocrat, were directly responsible for the deplorable condition of a whole generation of women left physically damaged and spiritually crippled from the results of abortion.² No group of women had yet locked horns with this public enemy.

In 1914 her paper *The Woman Rebel* was obstructed by the Federal law on mailing. At the same time she wrote a pamphlet entitled *Family Limitation* and

¹ See this work for much that follows.

² Margaret Sanger of course means *clandestine* abortion. For a fair discussion of the effects of clinical abortion see *Abortion* by Ludovici, Stella Browne, and Harry Roberts (Allen and Unwin, 1935) also the chapter of that title in my *Sex and Revolution*.

Comparison with America

made arrangements for the distribution of 100,000 copies. She writes:¹

Within its covers was contained all the practical advice I could give, including the names and description of the devices used for contraception which I had obtained in France. It was simply and plainly written, and was dedicated to the wives of working men.

She was then indicted for articles which had appeared in *The Woman Rebel* and left the country in October 1914. In December a man presented himself at William Sanger's studio and said that he was personally acquainted with Mrs. Sanger and wanted a pamphlet on family limitation for his own use. Sanger gave him one. The man was a decoy sent by Comstock and in due course that gentleman arrived himself and arrested Sanger. He was brought to trial in September 1915 and promised acquittal if he would reveal the whereabouts of the author of the pamphlet. On conviction he served a term of imprisonment in default of paying a fine. Comstock gave evidence at the trial, took a chill, and died.

Margaret Sanger returned to the U.S.A. to stand her trial but early in 1916 the Government entered a *nolle prosequi* and she went free.

At this time Margaret Sanger became convinced that clinics were even more important to her cause than pamphlets and the story of her subsequent struggles belongs to the history of birth control

¹ *Op. cit.*, page 83.

The Banned Books of England

rather than of literary freedom. Her *Birth Control Review* does not appear to have attracted the attentions of the law. Norman Haire's *Birth Control Methods*¹ has however just been refused entry by the American postal authorities.

BIRTH-CONTROL PROPAGANDA IN ENGLAND

Unhappily it is necessary to deal with the discreditable prosecution of her pamphlet in England. It is reported in *The Times* of January 11, 1923, as follows:

At West London Police Court yesterday, Mr. Boyd heard an adjourned summons against Guy Aldred and Rose Aldred (or Witcop) of Richmond Gardens, Shepherd's Bush, for keeping at that address copies of a certain obscene book for sale and gain, the defendants being called on to show why such books should not be destroyed. It was stated that the book was called 'Family Limitation,' and was written by Margaret Sanger, an American.

Mr. Harry Myers, for the defence, argued that there was nothing in the book which was obscene. It was written by a woman of refinement and education, and the ideas advocated therein were those which could be found

¹ Allen and Unwin, 1936. It is significant to note that Himes's great work has been banned entry into America's potential military rival Japan. The idea that military strength will result from the indiscriminate breeding caused by contraceptive ignorance is almost certainly a mistake. In the war of the future (unhappily we cannot shut our eyes to its possibility) quality in the way of ready intelligence and technical skill will probably count far more than quantity.

Comparison with America

in many medical books. Its object was to explain to ignorant women how they could avoid large families.

Evidence for the defence was given by Sir W. Arbuthnot Lane, consulting surgeon to Guy's Hospital, who said that in his opinion the book was one that ought to be in the hands of every young person about to be married. He saw no harm in it.

Mr. Harold Cox, who was also called for the defence, said it was a 'gross injustice' to call the book obscene.

The Magistrate: Would you put such a book in the hands of a girl or boy of sixteen?—All over London you see books of a lustful tendency, and there is nothing to prevent a boy or girl buying them. This is a book written for the edification of poor, ignorant women to teach them how to limit their families.

The Magistrate observed that he had to consider not only the pamphlet or book itself, but the manner of its publication. It has been said with truth that dirt was only matter in the wrong place. The eminent persons called for the defence had stated that the only object of the book was to give persons of a certain age certain necessary information and advice on the subject of birth control. That, no doubt, was true, but the whole question was whether such information had been published indiscriminately. He was of opinion that publication had been indiscriminate and therefore he should direct that the books be destroyed.

H. G. Wells and St. Loe Strachey were both willing to give evidence at the unsuccessful appeal but were not allowed to do so.¹

It was undoubtedly disgraceful that the work of a

¹ See *On British Freedom*, by Clive Bell.

The Banned Books of England

woman of high intelligence and culture who had made a great name for herself as a social reformer and an advocate of birth control in America, should be treated in this way. But it is clear that the Magistrate was more concerned with the manner of publication than with the content of the book. Apparently what upset authority most about this pamphlet was a drawing, copied from a medical text book in order to assist a woman in fixing a cervical pessary. The drawing was ultimately removed and the pamphlet continued to be published throughout the British Empire.¹

During her visit to England before her trial Margaret Sanger visited Marie Stopes's house in Hampstead and imparted the information obtained from France.² Margaret Sanger's subsequent propaganda for birth control again hardly concerns us. These two women have probably done more good in the Anglo-Saxon world, nay even in the whole world, than any other two people since the beginning of the War. But here our interest in Marie Stopes's work is a negative one—to notice that she was not harassed by the law of obscene libel. In her book *Contraception, Its Theory, History and Practice*, although not unmindful of possible legal dangers ahead as a result of reactionary activity, she has little to complain of

¹ Sanger *op. cit.* page 262. Compare reference to the illustrations in Knowlton's pamphlet on pages 145 and 146 herein.

² Sanger *op. cit.* pages 101 and 102.

Comparison with America

regarding English literary law so far as her work is concerned:

In Great Britain prosecutions of those advocating contraception have not been many. They have always depended on some accessory circumstance and have not been direct attacks on the subject itself.¹

It is very commonly supposed that the Bradlaugh trial of 1877 proved the legality of birth control propaganda in England. How far this view is correct I leave the reader to judge from the account of the trial given in the next chapter.² There is no doubt however that the trial gave an enormous impetus to that propaganda and that the propagandists have had little to fear since.

If however the propagandist was a doctor it was not only the law of the land he had to bear in mind but the ethics of his profession. In 1887, as a result of a protest by the Leeds Vigilance Association, Dr. H. A. Allbutt of that city was struck off the Medical Register for publishing a work on contraception entitled *The Wife's Handbook*. The price was 6d. It has been suggested that part of Allbutt's offence was the rather blatant advertisements in the book and recommendations of his own appliances. Whether

¹ 1934 edition, page 355.

² On page 240 of his *Medical History of Contraception* Himes laments: "The fact that we have no scholarly accounts of the Bradlaugh-Besant and Truelove trials is a serious hiatus in our knowledge of this social movement."

The Banned Books of England

this be so or not there is no sign of it in the verdict of the General Medical Council:

In the opinion of the Council, Mr. Allbutt has committed the offence charged against him; that is to say, of having published, and publicly caused to be sold, a work entitled *The Wife's Handbook*, in London and elsewhere, at so low a price as to bring the work within the reach of the youth of both sexes, to the detriment of public morals. Secondly, the offence is, in the opinion of the Council, "infamous conduct in a professional respect." Thirdly, the Registrar is hereby ordered to erase the name of Mr. H. A. Allbutt from the Medical Register.¹

Before leaving the subject of birth control we may note that in December 1930, the Chichester police seized some copies of the second edition of Michael Fielding's *Parenthood: Design or Accident*² with a view to prosecution, but nothing came of it. The book, which has a preface by H. G. Wells and is recommended by the National Birth Control Association, is perhaps the best all-round work on the subject.

RECENT DEVELOPMENTS IN THE U.S.A.

To return to America, in spite of the complacency of the judiciary in the past and the spate of legislation we have noted, a small but hysterical public opinion in favour of the suppression of "obscene" literature has found its task far from simple. The difference

¹ Quoted from Himes *op. cit.* page 254.

² Third edition, page 163.

Comparison with America

between the laws of the various States, the separate State administrations, the ease with which publication can be shifted from one State to another, and the general dilatoriness of the law, all combine to make repression perhaps less effective than in England. In addition there is a growing public opinion antagonistic to the "vice crusaders" at least in some of the big cities. To meet this factor the U.S.A. Post Office Department is sponsoring the Dobbins bill,¹ which would allow a sender of unmailable matter to be tried at the place of receipt or deposit instead of only at the point of mailing as at present. A great deal of the literature to which the authorities object emanates from New York where the state of opinion is such that convictions are hard to obtain. Things would be easier for them if they could hale the accused person to the South or the far West where the feeling against "obscenity" still continues to be strong although the demand for it is by no means negligible.

But over and above all there is a more enlightened and more liberal spirit growing up in responsible circles. The Courts have drifted away from the Cockburn standard and defined obscenity as that which "suggests impure and libidinous thoughts"² to a normal person.³ On January 15, 1920, Judge Nott

¹ See *The Nation*, March 11, 1936.

² *U.S. v. Bennet* (1879).

³ In the *Ulysses* case Judge Woolsey said:

"Whether a particular book would tend to excite such impulses and thoughts must be tested by the Court's opinion as to its effect

The Banned Books of England

directed the Grand Jury in New York County to absolve James Branch Cabell's *Jurgen* of obscenity. In *U.S. v. Kennerley* (1923) Judge Learned Hand wrote:

I hope it is not improper for me to say that the rule as laid down (i.e., in *Regina v. Hicklin, supra*), however consonant it may be with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time, as conveyed by the words 'obscene, lewd, or lascivious.' I question whether in the end men will regard that as obscene which is honestly relevant to the adequate expression of innocent ideas, and whether they will not believe that truth and beauty are too precious to society at large to be mutilated in the interests of those most likely to pervert them to base uses. Indeed, it seems hardly likely that we are even today so lukewarm in our interests in letters or serious discussion as to be content to reduce our treatment of sex to the standard of a child's library in the supposed interest of a salacious few

The Dennett case is very instructive. In 1918 Mary Ware Dennett, a well-known social worker, made a short compilation of elementary sex information for her two adolescent sons. The material subse-

on a person with average sex instincts—what the French would call *l'homme moyen sensuel*—who plays, in this branch of legal inquiry, the same role of hypothetical reagent as does the 'reasonable man' in the law of torts and 'the man learned in the art' on questions of invention in patent law."

The absurdity of taking persons "whose minds are open to such immoral influences" as the criterion is illustrated by a case of Krafft-Ebing's—No. 47 in the tenth (English) edition of *Psychopathia Sexualis*—of a man who found *Uncle Tom's Cabin* corrupting.

Comparison with America

quently appeared in the *Medical Review of Reviews* and was so enthusiastically received that it was reprinted in 1919 as a pamphlet entitled *The Sex Side of Life, an Explanation for Young People*. In 1922 the pamphlet was declared unmailable by the Post Office Department. Six years later the author fell into a trap set by the authorities and she was indicted for mailing the pamphlet to a fictitious "Mrs. Miles." A motion to quash the indictment failed and in 1929 she was convicted. The following year the conviction was reversed on appeal.¹ Follies however were still perpetrated. *The Times* of May 23 and 24, 1929, reports the confiscation of copies of Voltaire's *Candide* consigned to a Boston bookseller upon a decision of the Treasury Department that numerous passages were obscene. A group of Harvard University professors protested and it was pointed out that the book was part of the reading course at Harvard and Radcliffe and obtainable at all well-appointed libraries. It was only in April 1931 that the ban was lifted from Marie Stopes's *Married Love*² by the enlightened decision of Federal Judge Woolsey. In his judgement he spoke of his reaction to the book as that of "one who has read Havelock Ellis." If only all who sit in judgement on the literary and scientific work of others included Ellis in their reading! The following

¹ U.S. v. Mary Ware Dennett. See the *Encyclopædia Sexualis* and *Who's Obscene?* by Mary Ware Dennett.

² U.S. v. *Married Love* 48 F (2d) 821. See item 40(b) of the Bibliography.

The Banned Books of England

July *Contraception* itself was on trial and the same judge refused to find it obscene.¹ The Supreme Court of the United States abandoned the Cockburn standard in *Swearingen v. U.S.A.* As we have seen the ban was lifted from *Ulysses* in 1934.

In this legal atmosphere John S. Sumner, the Secretary of the New York Society for the Suppression of Vice, has found his path far less rosy than that of the great Anthony Comstock. We have noted his non-success with *The Well of Loneliness*. More recently he has suffered a series of humiliating failures. In 1933 Magistrate Van Amringe refused to entertain his charge against an illustrated volume dealing with nudism entitled *Let's Go Naked*. But his most signal defeat was the *God's Little Acre* judgement. The case was *The People of the State of New York against The Viking Press Inc. and Helen Schiller* in the Magistrate's Court, City of New York, Fourth District, Borough of Manhattan. On May 2, 1933, the New York Society for the Suppression of Vice, through its agent John S. Sumner, brought the defendants into court on an obscenity charge for publishing *God's Little Acre*, a novel by Erskine Caldwell. The defence fought the charge on the ground that the book was an honest work of literature which could not be considered obscene if read as a whole, and introduced in support of their case letters of protest from leading citizens, including many writers and reviewers, as well as

¹ *U.S. v. Contraception.*

Comparison with America

excerpts from newspaper and magazine reviews praising the book for its literary qualities. Contrary to the English practice this opinion was duly considered by the Court. Mr. Sumner attempted to combat this evidence by alleging that the literati were abnormal people and unrepresentative of the community as a whole. On May 23rd Magistrate Benjamin Greenspan delivered a masterly judgement of which the following is the concluding half:

This Court cannot subscribe to Mr. Sumner's opinion of the capacity for fair judgment of these leaders of American literary and educational thought. The Court declines to believe that so large and representative a group of people would rally to the support of a book which they did not genuinely believe to be of importance and literary merit. The Court is of the opinion, moreover, that this group of people, collectively, has a better capacity to judge of the value of a literary production than one who is more apt to search for obscene passages in a book than to regard the book as a whole.

This Court has carefully read the book in question. It is an attempt at the portrayal, in a realistic fashion, of life as lived by an illiterate Southern white farm family. A daughter of this family is married to a worker in a Southern mill town. There is inter-action between the run-down farm life and the mill town life. Both on the farm and in the mill town the people are primitive and impoverished. They are deprived of the opportunity for development, and their activities are largely sexual. They are of a simple nature, and savage passion is found close to the surface.

The Court is not sufficiently familiar with conditions

The Banned Books of England

in the portion of the country described to say, at first hand, that the description is accurate. Nothing in this opinion is to be construed as an expression by the Court as to whether or not the book is an accurate piece of reporting. As fiction, however, it contains internal evidence that it was written with a sincere attempt to present with truth and honesty a segment of life in the Southern United States. The author has set out to paint a realistic picture. Such pictures necessarily contain certain details. Because these details relate to what is popularly called the sex side of life, portrayed with brutal frankness, the Court may not say that the picture should not have been created at all. The language, too, is undoubtedly coarse and vulgar. The Court may not require the author to put refined language into the mouths of primitive people.

The book as a whole is very clearly not a work of pornography. It is not necessary for the Court to decide whether it is an important work of literature. Its subject matter constitutes a legitimate field for literary effort and the treatment is also legitimate. The Court must consider the book as a whole even though some paragraphs standing by themselves might be objectionable. "No work may be judged from a selection of such paragraphs alone. Printed by themselves, they might, as a matter of law, come within the prohibition of the statute. So might a similar selection from Aristophanes or Chaucer or Boccaccio or even from the Bible. The book, however, must be considered broadly as a whole." *HALSEY V. N.Y. SOCIETY FOR THE SUPPRESSION OF VICE*, 234 N.Y. 1, at page 4. The test is whether "not in certain passages, but in its main purpose and construction," *HALSEY V. N.Y. SOCIETY FOR THE SUPPRESSION OF VICE*, 234 N.Y. 1, at page 10, the book is obscene and lewd, and, therefore, violative of the statute.

The Court holds that it is not. This is not a book where

Comparison with America

vice and lewdness are treated as virtues or which would tend to incite lustful desires in the normal mind. There is no way of anticipating its effect upon a disordered or diseased mind, and if the courts were to exclude books from sale merely because they might incite lust in disordered minds, our entire literature would very likely be reduced to a relatively small number of uninteresting and barren books. The greater part of the classics would certainly be excluded. In conclusion, "God's Little Acre" has no tendency to inspire its readers to behave like its characters, therefore, it has no tendency to excite "lustful desire." Those who see the ugliness and not the beauty in a piece of work are unable to see the forest for the trees. I personally feel that the very suppression of books arouses curiosity and leads readers to endeavour to find licentiousness where none was intended. In this book, I believe the author has chosen to write what he believes to be the truth about a certain group in American life. To my way of thinking, Truth should always be accepted as a justification for literature.

No complaint will be entertained against the defendants and the summons herein will be dismissed.¹

An Englishman can but blush to hear such good sense, such a breath of freedom, coming from an American bench. We may opine that in this matter America is returning to those principles of liberty which have been the mainspring of all that is best in both nations.

The trend of opinion in the U.S.A. is illustrated by an Exhibition held by the Junior League of the City of New York, April 24, 1935.² This included copies

¹ See item 30 of Bibliography.

² The catalogue of the exhibition has been published under the title of *Banned Books*.

The Banned Books of England

of books banned for various reasons at various times and in various places. The earliest exhibit was the *Analects* of Confucius. This book incurred the wrath of Shi-Hwang-ti, the "first universal Emperor" who made a strenuous effort to destroy the classical literature of China. Besides burning Confucius's work the Emperor buried alive hundreds of his disciples. Among the exhibits that followed were works of Virgil, Propertius, Dante, Galileo, Rabelais, Luther, Rousseau, Casanova, Kant, Darwin, Ibsen, Baudelaire, Joyce and Marie Stopes, up to the victims of the Nazi "burning of the books." The exhibition must have been a grand historical pageant of the battle of authority against new ideas¹ in religion, politics and morals. Fortunately for mankind that battle has been in the main a rearguard action.

¹ An example of the way in which our law of obscenity can operate against ideas as distinct from objectionable methods of expressing them is provided by the prosecution by the National Vigilance Association of Hubert Wales's *The Yoke* (John Lang, 1907). Lang, without admitting "obscenity", agreed to stop publication and a destruction order was made (*Times*, December 15, 1908). The novel is almost Victorian in its treatment of love scenes. The trouble must have been the story (mild enough by present-day standards) which tells how Angelica Jenour lost her fiancé, a widower, by death. To fulfil his dying wish she brings up his son, Maurice Heelas. When Maurice grows to manhood she becomes his lover partly to mitigate the lovelessness of her tragedy, but chiefly to shield him from the perils which drive his friend, Christopher Graham, to venereal disease and suicide. Ultimately Maurice marries a girl of his own age with Angelica's blessing.

THE INJUSTICE OF THE LAW

WE are now in a position to consider some of the more detailed objections to the law of obscene libel as it stands.

JURY OR NO JURY

A defendant in a literary obscenity case hardly knows which to prefer trial by jury or summary disposal by a magistrate's court. If the proceedings aim at the destruction of the book under Lord Campbell's Act he has no choice; the Act provides for summary disposal only. But if he himself is accused of obscene publication he can insist on trial by jury—with the possibility of more serious penalties than a magistrate could inflict in the event of conviction. Magistrates are usually old, often ignorant, and not infrequently representative of the outlook of fifty years ago so far as sexual matters are concerned. As literary tribunals Benches have not been improved by the endeavour which has been made in recent years to give proportional representation to all political parties. The choice of the supposed representatives of Labour has often been far from fortunate. Political bias of any colour is out of place on the seat of justice and it is none the better for being plebeian and uneducated.

The Banned Books of England

The average bench of magistrates is not a pleasant sight. It generally looks as if all the examples of physical and mental decrepitude in the neighbourhood had been rounded up for the occasion, and inspires little confidence in the mind of the unfortunate defendant who wishes to plead the claims of artistic merit or new ideas.¹ On the other hand everyone acquainted with the administration of the law is eloquent on the prejudice and caprice of juries. There is however a chance that a jury may contain at least one member young enough, intelligent enough, and sufficiently in touch with life, not to remain unmoved when listening to such evidence as was given in favour of Edward Charles's book. Such a member, alive to the evil of sexual obscurantism, sympathetic with the sexual aspirations of the ordinary man and woman, having perhaps growing children, might well influence his or her eleven colleagues to give a verdict in favour of enlightenment—a gamble no doubt, but a magistrate's court may be a certainty—a certainty of defeat.

Before leaving this question it will be well to note an example of the mediaeval gloom which surrounds the whole subject of obscene libel. It is one of the boasts of British justice that it is administered in the

¹ The extent to which senility and deafness are regarded as qualifications (or at any rate not disqualifications) for the office of justice of the peace was made clear in a correspondence carried on in *The Times* during September 1936. See also *Justice of the Peace* by Leo Page (Faber and Faber, 1936).

The Injustice of the Law

open and that every subject can see for himself that it is fairly and equitably dispensed. There are a few exceptions to this general principle (unhappily they have been increased in number of recent years) but it holds so far as the bulk of the law is concerned. If A is mulcted in £1,000 damages for libelling B anyone can get a newspaper or a law report, read what A wrote about B, judge the truth or otherwise of the statement from the evidence given, and generally form his own view on the justice or otherwise of the judgement. Similarly if C is sent to prison for six months everyone can know exactly what he did, the evidence on which he was convicted, and what his character was. The reader will not be surprised to learn that where "obscenity" is involved there is an exception to this desirable state of affairs. It is no defence to a charge of publishing an obscene libel that the matter complained of is a fair and accurate report of judicial proceedings or of a public meeting. This is common law doctrine¹ and it has been expressly enacted in the Law of Libel Amendment Act, 1888, and the Judicial Proceedings Act, 1926. One of the consequences of this state of the law is that no adequate reporting of obscene libel cases is possible. The British citizen must accept the findings of the Bench or the jury in the dark. Even if he attends the Court the passages complained of are often not read out but

¹ *R. v. Mary Carlile* (1819) and *Steele v. Brannan* (1872). A report of Hicklin's case was condemned as obscene (*Russell on Crime* page 1369).

The Banned Books of England

copies of the book are handed round to witnesses, etc. In the case of *The Sexual Impulse* no one who did not see the book at or before the trials is in a position to make a rational and intelligent evaluation of the decisions of the Courts, the views of the witnesses, or, for that matter, of my own humble opinion. Such an evaluation can only be made after an examination of the passages to which objection was taken: to publish them in any way would be to invite prosecution. It may be argued that to allow publication in any form of passages alleged to be obscene would be to perpetuate an evil which the law is attempting to stop. But this applies to other forms of libel. In a recent trial certain statements about Jews alleged to be criminal, and subsequently found to be so, were plainly set out in the newspapers.¹ This must to some extent have continued the evil the law was engaged in putting a stop to; but the advantage of open and comprehensible justice is considered to be an overriding consideration in such cases. Why not with "obscenity"? We may note however that the Law of Libel Amendment Act of 1888 provides that no proceedings for publication of criminal libel may be commenced against a newspaper without the order of a judge in chambers.

POSITION OF AUTHOR AND PUBLISHER

An even greater difficulty than a hazardous choice between jury or no jury attends the author or publisher

¹ See *The Times* September 19, 1936.

The Injustice of the Law

involved in obscenity cases—neither may be parties to the proceedings at all. Indeed an author is rarely proceeded against. Consequently the fate of his book largely rests upon the vigour and efficiency of the defence his publisher may put up. But the publisher himself may be in the hands of some third party. Before any case was brought against Boriswood Ltd., the publishers of *The Sexual Impulse*, the book had been condemned under Lord Campbell's Act. In April 1935 the police seized a hundred odd different books from a London bookseller. The Magistrate at Bow Street sorted them out, condemned some, and released the others. A copy of *The Sexual Impulse* was among the condemned! No official communication or order was made to Boriswood Ltd., and they continued publishing until they were proceeded against in July. Of course the previous case was not mentioned in the Boriswood trial nor did it in any way affect the decision, but the instance shows how cavalierly the creation of a man's mind can be treated by the law of this country.

HAVELOCK ELLIS

This point is even better illustrated in the *Studies in the Psychology of Sex* case of 1898^x which in the light of *The Sexual Impulse* prosecution can no longer be regarded as ancient history and has many aspects

^x See *Havelock Ellis* by Houston Peterson, *A Note on the Bedborough Trial* by Havelock Ellis, and the Forewords to the 1936 edition of his *Studies in the Psychology of Sex*.

The Banned Books of England

which are unhappily only too relevant to present-day conditions. The prosecution raised a storm of indignation and a Defence Committee was formed which included Robert Buchanan, Shaw, J. M. Robertson, George Moore and Edward Carpenter. A circular was drawn up and sent all over the country. A fund was raised and Horace Avory briefed for the defence. The defendant was however neither Ellis nor his publisher but George Bedborough, the Secretary of The Legitimation League and Editor of its monthly organ *The Adult*. The League's main object was the obtaining of legal status for "illegitimate" children, but it was naturally interested in the principle of divorce by mutual consent and other sexual problems. The League had obtained a great deal of notoriety because adherence to its tenets had seemed in the eyes of two doctors sufficient evidence for certifying a young lady as a lunatic. An appeal to the Commissioners in Lunacy by the not unnaturally outraged League had secured her release and initiated a "boom" in its activities. So much so that the respectable began to agitate for its suppression and Sir Theodore Martin (biographer of the Prince Consort and author of *Queen Victoria As I Knew Her*) in a letter which appeared in the press on December 20, 1897, suggested that "the strong hand of the law should crush a teaching which would turn Society into groups of harlots." The Comstocks and the Jixes were only too glad of a lead. Detectives began to attend the League's meetings.

The Injustice of the Law

Bedborough's flat, the living room of which he used as the League's Office, was watched in the hope of raiding a homosexual orgy. All the police found was the volume entitled *Sexual Inversion* of Ellis's great work on sale there.

The difficulties of publishing a work of the nature of this volume had driven Ellis in all innocence to a publisher who was far from satisfactory, the pseudonymous "Dr. Roland de Villiers." The police were interested in this gentleman for reasons entirely unconnected with our subject, and the authorities were only too glad of an opportunity to kill two birds with one stone. The character of "de Villiers" provides the only vestige of excuse or explanation for the attack on Ellis's work. On May 27th a detective bought a copy from Bedborough and he was shortly afterwards arrested and charged with "publishing an obscene libel." Certain copies of *The Adult* were also alleged to be obscene, as well as a print of a lecture delivered at one of the League's meetings. Ellis had no connection with either Bedborough or the League and he had not contributed to *The Adult*. The League happened to have copies of his book for sale because the publisher also handled *The Adult*.

The case was due for trial at the Central Criminal Court on October 30th. The indictment read:¹

that George Bedborough, being a person of a wicked

¹ The picturesque phraseology of this and other forms of indictment was abolished by the Indictments Act 1915.

The Banned Books of England

and depraved mind and disposition, and unlawfully and wickedly devising, contriving, and intending, to vitiate and corrupt the morals of the liege subjects of our said Lady the Queen, to debauch and poison the minds of divers of the liege subjects of our said Lady the Queen, and to raise and create in them lustful desires, and to bring the said liege subjects into a state of wickedness, lewdness, and debauchery, on the 27th day of May, in the year of our Lord, one thousand eight hundred and ninety eight, at a certain shop, to wit Number 16 John Street, Bedford Row, in the County of London, and within the jurisdiction of the said Court, unlawfully, wickedly, maliciously, scandalously, and wilfully did publish, sell and utter, and cause and procure to be published, sold and uttered a certain lewd, wicked bawdy, scandalous, and obscene libel, in the form of a book entitled 'Studies in the Psychology of Sex: Vol. I. Sexual Inversion by Havelock Ellis,' in which said book are contained among other things, divers wicked, lewd, impure, scandalous and obscene libels. . . . To the manifest corruption of the morals and minds of the liege subjects of our said Lady the Queen, in contempt of our said Lady the Queen, and her laws, in violation of common decency, morality, and good order, and against the peace of our said Lady the Queen, her Crown and Dignity.

The stage was set for a grand vindication of the principle of freedom, but at the eleventh hour Bedborough who had been released on bail lost his nerve. Without consulting the Defence Committee or the lawyers they had engaged he went to Scotland Yard and made his peace. He was promised complete immunity if he pleaded guilty to the substantial part

The Injustice of the Law

of the charges in regard to both Ellis's book and *The Adult*. On the great day he appeared in Court without counsel and carried out his part of the bargain. Counsel for the prosecution rose and said that, as a result of the defendant's voluntary confession and the assistance he had given the police in their inquiries, the authorities were satisfied that his position was an entirely subordinate one in regard to the publications complained of. He had undertaken to sever himself from all such traffic and from the Legitimation League. The prosecution therefore desired no more than that he should be bound over. Sir Charles Hall, the Recorder, assented to this suggestion and in giving judgement allowed himself to address the following remarks¹ to Bedborough:

"You have acted wisely for it would have been impossible for you to have contended with any possibility whatever of being able to persuade anybody that this book, this lecture, and this magazine were not filthy and obscene works."

"I am willing to believe that in acting as you did, you might at the first outset perhaps have been gulled into the belief that somebody might say that this was a scientific work. But it is impossible for anybody with a head on his shoulders to open the book without seeing that it is a pretence and a sham, and that it is merely entered into for the purpose of selling this obscene publication."

"The result will be this—that so long as you do not

¹ Compare this loquacity with the reticence of the Chairman of Quarter Sessions reported on page 77.

The Banned Books of England

touch this filthy work again with your hands and so long as you lead a respectable life, you will hear no more of this."

John Sweeney, the detective who was in charge of the case, gives an amusing and simple-minded account of it in *At Scotland Yard*. He is very pleased with himself:

From the date of Bedborough's trial, five years ago, until now, no one has ever attempted to resuscitate the Legitimation League, and I think I may claim some credit for having carefully handled a delicate case, full of pitfalls, where the least slip would have meant one of two things—the growth of a Frankenstein monster wrecking the marriage laws of our country, and perhaps carrying off the general respect for all laws; or, on the other hand, of raising about the ears of the authorities a shriek of popular objection to our interference with the rights of free speech.

Shortly afterwards copies of another volume of the "Studies" were seized and an order made for them to be "burnt."¹ It is said that this really meant that the books were distributed among police officers who were thus in a position to study them with a view to dealing with similar books. Subsequently de Villiers was arrested on another charge and soon afterwards died. The coroner's inquest returned a verdict of death from apoplexy but it is believed that he poisoned himself melodramatically from a ring he carried about

¹ Dean Inge had a little *auto-da-fé* on his own. He boasted to the readers of the *Evening Standard* on May 22, 1929: "I bought the first and second volumes, and then burnt them."

The Injustice of the Law

with him. An interesting repercussion is related by Walter M. Gallichan:

At the second indictment of Havelock Ellis's works, one of my own books, "Chapters on Human Love," written in 1898 under the pen-name "Geoffrey Mortimer," was seized by the police, and an order was made by the Watford magistrates that it should be destroyed. This book would now be considered old-fashioned in its reticence and propriety. I may remark here that the prohibition created a considerable demand for this volume, and that a London bookseller, who by some occult means obtained copies, sold them at two guineas each. For some years I often saw the title of my condemned book among the list of "wanted" in second-hand booksellers' catalogues. Had the volume been sold unmolested in the ordinary way, and at ten shillings, the original price, it would have probably attracted very little notice.¹

Havelock Ellis's comment² in the postscript to his great work on the attack to which he was subjected is a model of restraint and nobility:

I supposed that such a student was at all events secure from any gross form of attack on the part of the police or the government under whose protection he imagined that he lived. That proved to be a mistake. When only one volume of these 'Studies' had been written and

¹ *Op. cit.*, page 165. The book is still priced at a premium. I was recently asked fourteen shillings for a copy. De Villiers's *Where the Child is King* advertised in it did not, I think, see the light.

² In *Sex in Relation to Society*. Although as Ellis says the Studies were well received in Germany and the U.S.A. it is worthy of note that the German edition was excluded from the States.—Schroeder, *op. cit.*, page 70.

The Banned Books of England

published in England, a prosecution instigated by the government put an end to the sale of that volume in England and led me to resolve that the subsequent volumes should not be published in my own country. I do not complain. I am grateful for the early and generous sympathy with which my work was received in Germany and the United States, and I recognise that it has had a wider circulation, both in English, and the other chief languages of the world, than would have been possible by the modest method of issue which the government of my own country induced me to abandon. Nor has the effort to crush my work resulted in any change in that work by so much as a single word. With help, or without help, I have followed my own path to the end.

For it so happens that I come on both sides of my house from stocks of Englishmen who, nearly three hundred years ago, had encountered just these same difficulties and dangers before. In the seventeenth century, indeed, the battle was around the problem of religion, as to-day it is around the problem of sex. Since I have of late years realised this analogy I have often thought of certain admirable and obscure men who were driven out, robbed, and persecuted, some by the Church because the spirit of Puritanism moved within them, some by the Puritans because they clung to the ideals of the Church, yet both alike quiet and unflinching, both alike fighting for causes of freedom or of order in a field which has now for ever been won. That victory has often seemed of good augury to the perhaps degenerate child of these men who has today sought to maintain the causes of freedom and of order in another field.

Ellis as a youth of sixteen resolved to devote his life to this great work. Nineteen years after a pre-

The Injustice of the Law

liminary study *Man and Woman* appeared from his pen. The bulk of his task took another sixteen years to write, but it could not be said to have been completed till 1928—a total labour of fifty-three years.

JAMES HANLEY'S BOY

That the difficulties of author and publisher due to the unfair way in which the law of obscenity can be put into operation have by no means diminished in recent times is illustrated by the prosecutions in respect of James Hanley's *Boy*.

This novel was first published in 1931 by Boriswood Ltd., at 7s. 6d. It is a tale of a working-class lad who runs away to sea, of the hardships and sexual assaults to which he is subjected on board ship, of his adventures in the notorious Sister Street in Alexandria, and of his murder by the captain of the vessel because he has contracted syphilis. The book is rather highly coloured in places but on the whole it reads rather like a tract of the "orrible warning" variety. There is nothing in it which is not common knowledge among people who served in the War or who have lived in the East. A friend of mine sent a copy to her nephew, a midshipman in the Navy; in a subsequent letter home he wrote: "Thank God, Auntie, that you sent me that book!"

After the book had run into two reprints a cheap edition at 3s. 6d. was issued in May 1934. In the

The Banned Books of England

November of the same year the police of Bury seized copies of the book from a local branch of a Manchester library and stated that the library would be proceeded against. The publishers were legally advised that the action seemed a purely local one and that the authority would probably be content with an undertaking from the library that the book would be withdrawn. In January 21st without the slightest warning summonses were served on the directors of the publishing firm in London charging them with aiding and abetting the publication of an obscene libel. Simultaneously they were informed that the proprietor of the library had also been summoned as principal and that he had decided to plead guilty. The book was withdrawn from circulation and when the case came on in the Magistrates Court at Bury on January 30th all the defendants were committed on bail to the Manchester assizes without the publishers' plea being heard. In spite of the fact that the book had been on sale for three and a half years without complaint and that it had been reserved for a Bury police sergeant to discover what no one else had found out during all that period¹ the publishers were legally advised to

¹ The Bristol police seized a novel by Gervée Baronte called *Dying Flame* (1932) after it had been published for five years. The application for destruction was only withdrawn on the defendants, two bookselling firms, agreeing to withdraw from circulation. No admission of obscenity was made. The author heard nothing of the matter until a firm refused to handle a new book of hers on the ground that *Dying Flame* had been banned. (*Reynolds*, November 17, 1935.)

The Injustice of the Law

plead guilty. It was thought that a Manchester jury would feel themselves bound to vindicate at least the honour of Lancashire. A plea of guilty was accordingly filed and when the directors attended the Assize Court on February 28th the case was adjourned in order to give the judge an opportunity of reading the book. Four days later the prosecution further arraigned the Company directly as a principal for publishing an obscene libel. In view of the plea to the count of aiding and abetting, and the fact that the case was to be heard almost any day, the Company were advised that they had no alternative but to plead guilty to this count also.

On March 26th Mr. Justice Porter fined each director £50 and the Company £250—a total of £400, and he remarked: “It is not for me to discuss the question as to whether there has been an obscene libel or not, but I have my own strong and personal views about it.”

E. M. Forster, speaking¹ at the International Congress of Authors in Paris on June 21, 1935, referred to this case:

I have in my mind a recent case in which the law has been used to crush a book, a novel of much literary merit, and since this is a congress of authors the case is apposite and I will deal with it faithfully.

The book in question is “Boy” by James Hanley.

¹ The paper, entitled *Liberty in England*, appears in the author’s *Abinger Harvest*.

The Banned Books of England

"Boy" was published nearly four years ago, and went into no less than four editions before it attracted the wrath of the authorities. It had been discussed, praised, blamed and generally accepted as a serious and painful piece of work, whose moral, if it had one, was definitely on the side of chastity and of virtue. Its contemporary backing was considerable—for instance, I have seen quoted a testimony from the late Colonel Lawrence, whom respectable society is at present canonising. One assumed that "Boy" had, so to speak, passed into our literary heritage, where it would remain for posterity to consider and finally to assess.

Regarding the general position of literature he said:

I want greater freedom for writers, both as creators and critics. In England, more than elsewhere, their creative work is hampered because they can't write freely about sex, and I want it recognised that sex is a subject for serious treatment and also for comic treatment; this latter aspect of it is usually ignored by speakers when they get on to platforms, so I don't wish to miss it out.

BESSIE COTTER

A somewhat similar novel is *Bessie Cotter* by Wallace Smith which was published in January, 1935, by Heinemann, an old firm of the highest repute. They were prosecuted at Bow Street on April 10th for "publishing an obscene libel" after six thousand copies had been sold.

The novel which has been highly praised as litera-

The Injustice of the Law

ture depicts the sordid life of a prostitute in realistic and unsentimental terms. The scene is not specified but I am informed that it is Chicago in the early years of the present century. Perhaps the authorities moved against it because it cuts across conventional theories of what a prostitute ought to be and think. Bessie is neither trapped, drugged nor brutally treated. She is neither tragically miserable nor dramatically wicked. She is a most lovable character with a simple philosophy. She does not particularly like the "sporting life," but she prefers 25 dollars a night at Miss Myrtle's "parlour house" to 10 dollars a week in a factory. And so do her colleagues. There is nothing in particular to distinguish the book from many others which have escaped prosecution except one page on which two waiters clearing up in the early morning use the sort of words which such waiters do in fact use. It was because of this page (I imagine) that a plea of guilty was entered. A fine of £100 was imposed. On this occasion the Attorney-General, Sir Thomas Inskip, K.C., who conducted the case for the Crown remarked: "There has been a great deal of liberty and licence permitted for good or bad reasons, but sooner or later, it would seem to me, the limits of publications of this sort will have to be tested." And in opening the case he made the very illuminating statement: "The book deals with what everybody will recognise as an unsavoury subject—gratification of sexual appetite."

The Banned Books of England

SIR JAMES STEPHEN

The confusion and uncertainty of the law is well illustrated by turning to the work of that eminent jurist Sir James Stephen. The task will also serve to show that the influence of our old friend Lord Chief Justice Cockburn on the law of obscenity did not cease with the famous judgement of 1868.

In the first edition of Stephen's *Digest of the Criminal Law* 1877—he speaks of obscene publication as follows:

Everyone commits a misdemeanour who without justification, (a) publicly sells, or exposes for public sale or to public view, any obscene book, print, picture or other indecent exhibition; (b) publicly exhibits any disgusting object.

The splendid certainties to which subjective judgement can give rise are illustrated by the following portion of a note by Sir James Stephen to this article:

In scientific matters the line between obscenity and purity may be said to trace itself, as is also the case in reference to the administration of justice. It may be more difficult to draw the line in reference to works of art, because it undoubtedly is part of the aim of art to appeal to emotions connected with sexual passion. Personally I do not think any difficulty could ever arise, or has ever arisen. The difference between naked figures which pure-minded men and women could criticise without the slightest sense of impropriety, and figures for the exhibition of which ignominious punishment would be the only

The Injustice of the Law

appropriate consequence, makes itself felt at once, though it would be difficult to define it.

In a subsequent edition he added to (*a*) of the article quoted the words: "or any publication recommending sexual immorality, even if the recommendation is made in good faith and for what the publisher considers to be the public good"; and appended the following note:

These words are added in reference to the case of *R. v. Bradlaugh* tried before Cockburn, C.J., June 18, 1887. I have not seen any report of the trial itself. Proceedings in error on the ground that the indictment was defective were taken in 1878 and are reported in *Bradlaugh v. R.* (1878) 3 Q.B.D-607. The jury found the work presented, called the "Fruits of Philosophy," was published in good faith for the public good, and that it recommended immoral practices. It appeared in evidence that it was not obscene in the sense of being calculated or intended to excite passion.

The editors of the most recent edition (1926) remark with reference to this addition:

How far the statement is good law may be arguable. It is left as the author wrote it.

The 1877 edition also contained the following note:

I confine this article to obscenity because I have found no authority for the proposition that the publication of a work immoral in the wider sense of the word is an offence. A man might with perfect decency of expression, and in complete good faith, maintain doctrines as to marriage, the relation of the sexes, the obligation of truthfulness,

The Banned Books of England

the nature and limits of the rights of property, etc., which would be regarded as highly immoral by most people, and yet (I think) commit no crime. Obscenity and immorality in this wide sense are entirely distinct from each other. The language used in reference to some of the cases might throw some doubt on this, but I do not think any instance can be given of the punishment of a decent and *bona fide* expression of opinion commonly regarded as immoral.

Subsequently he added:

I leave this note unaltered, but since it was written the case of *R. v. Bradlaugh* may be considered to have gone some way towards establishing a different principle, and to have invested juries to a certain extent with the powers of *ex post facto* censors of the press so far as such publications on the relations of the sexes are concerned. I think that juries ought to exercise such a power with the greatest caution when a man writes in good faith on a subject of great interest and open to much difference of opinion, and when no indecency of language is used, except such as is necessary to make the matter treated of intelligible.

That an interpretation of the law, very like that which Sir James Stephen seems to fear in these passages, can be accepted at least in the lower courts is evident from the terms in which the Magistrate announced his decision in *The Sexual Impulse* case. Books tending to the encouragement of practices which are indecent, immoral¹ or vicious according to generally accepted opinion are made obscene. That

¹ Certainly lines 147-161 of Shelley's *Epipsychedion* are "obscene" according to this standard since they constitute an incitement to transcend "modern morals."

The Injustice of the Law

this definition of obscenity is undesirable, and that the law is capable of a better interpretation, is aptly exemplified by the words of Stephen quoted above. A little analysis may however be helpful. According to the more extreme of the two views under discussion almost any criticism of the marriage law is criminal since it may be held to lead in practice to "immorality." For instance under English law a woman may be tied to a criminal lunatic for life. A strong argument against this situation may encourage anticipation of reform. If this is the law then the words used by Annie Besant at her trial are true today:

"There are various rights of speech which the public enjoy. The right of discussion in theology is won; the right of publicly discussing politics is won; but as to discussion on social subjects, there is at present no right."

If it is possible to avoid this situation by coupling all such arguments with the strongest exhortations against anticipation, we must remember that law has always followed custom rather than *vice versa*. And one of the favourite arguments of the anti-divorce law reform party is that the people get along with the present law and that it does not lead to much "immorality"—which is untrue. But when we come to matters of custom rather than matrimonial law the view expounded in *The Sexual Impulse* case is completely stultifying. How can sexual custom be changed unless a minority of pioneers start doing what the majority regard as indecent or immoral? And how is this to

The Banned Books of England

come about if all advocacy of such unconventional courage is unlawful? Consider the nudist movement which is gaining ground so rapidly in this country and winning recognition of its hygienic and psychological merits in the most reputable quarters. Generally accepted opinion certainly regarded nudism as indecent when the movement was in its infancy. It is pioneer conduct and experimental practice that so often convinces generally accepted opinion of its error by demonstrating the innocuous nature and even the merit of practices previously condemned. Edward Charles's ideas if they are to make headway will certainly be tried out by the few long before they find general acceptance among the many. In short this view requires that everyone who does not think our marriage law above criticism and see eye to eye with the generality as to what is "immoral" or "indecent" must hold his peace. It assumes that our sexual institutions and customs can neither be improved by rational criticism nor defended by reasonable argument, and permits the advocates of *status quo* to declare a wide field of human activity sacrosanct from the influence of knowledge, reason and progress. The principle of a Free Press is at stake; and, to quote the Preface to the Report of the trial we are about to deal with:

There is but one limit to that Freedom, and that is that slander and libel should be easily punishable by the law, so that the pen should not be permitted to vent private

The Injustice of the Law

malice in assault on private reputation. The discussion of ethics, of social science, of medicine, is an attack on no one; no one's reputation is injured by it; it can have nothing in it of the nature of slander. Such discussion has always been the medium of progress, and the right to it must be won at all hazards.

THE BRADLAUGH TRIAL

The case of *R. v. Bradlaugh* which seems to have perplexed and perturbed Sir James Stephen was a most interesting one.

In the winter of 1876¹ a bookseller in Bristol was convicted for selling an edition of Charles Knowlton's *Fruits of Philosophy: An Essay on the Population Question* to which some questionable illustrations had been added. Charles Knowlton was an American physician of repute, and the pamphlet had been on sale in England for forty years. It explains the physiology of sex in simple language and advises and expounds the use of some rather primitive methods of contraception.

The printing plates of the pamphlet had been acquired by Charles Watts a business associate of the famous Charles Bradlaugh. Bradlaugh urged Watts to go to Bristol and declare himself the responsible publisher of the work. He did so and was arrested

¹ See *Charles Bradlaugh*, by Hypatia Bradlaugh Bonner, *An Autobiography*, by Annie Besant, and (particularly for the relation of the case to the birth control movement) *Contraception* by Marie Stopes.

The Banned Books of England

and committed for trial at the Central Criminal Court on January 12, 1877. While the trial was pending Watts changed his mind, withdrew his plea of "Not Guilty" and entered a plea of "Guilty." He was subsequently bound over in £500 and at the trial it was contended that it was unlawful to publish such physiological details. Bradlaugh who had severed all connection with Watts determined to take the matter into his own hands. In association with Annie Besant he republished the pamphlet without the illustrations. They were both arrested, marched through the streets to Bridewell, searched, and ultimately released on bail pending trial at the Old Bailey.

Bradlaugh then applied to the Queen's Bench for a writ of *certiorari* for the case to be removed to that Court and tried before a judge and special jury. This was granted, Lord Chief Justice Cockburn saying:¹

"We have looked at the book which is the subject matter of this indictment, and we think it really raises a fair question as to whether it is a scientific production for legitimate purposes."

The trial took place on June 18, 1877.² One of the

¹ In a scurrilous life of Charles Bradlaugh by Charles R. Mackay (D. J. Gunn, 1888) the author complains that the judge was unduly complaisant to the defendants. He alleges that "Sir Alexander Cockburn in his younger days, and, in his older days, had, as far as feminine intrigues were concerned, been anything but a strictly moral man." See also the *Encyclopaedia Britannica* (11th ed.) with regard to his "frivolities." Altogether a typical eminent Victorian!

² *The Queen v. Charles Bradlaugh and Annie Besant* (Bonner and Forder) is a verbatim report.

The Injustice of the Law

witnesses was H. G. Bohn, the founder of the famous library. The jury returned the following verdict:

"We are unanimously of opinion that the book in question is calculated to deprave public morals, but at the same time we entirely exonerate the defendants from any corrupt motives in publishing it."

The Lord Chief Justice instructed the jury that this was a verdict of guilty and subsequently sentenced the defendants to six months imprisonment, a fine of £200 each, and to enter into recognisances for £500 each for two years. The defendants had continued publication after the verdict of the jury. Had they not done so but submitted to the law, the Lord Chief Justice said, that the Court would have been prepared to discharge them on their own recognisances to be of good behaviour. After some argument they were released on bail pending appeal on a writ of error.

An appeal to quash the indictment on the ground that the words relied upon by the prosecution as proving their case ought to have been expressly set out was heard by Lord Justices Bramwell, Brett, and Cotton in February 1878. The appeal was allowed, it being held that the words should have been set out even if they were the whole book.¹ In opening his judgement Lord Justice Bramwell used the following words:

¹ The Law of Libel Amendment Act, 1888, provided that a copy of the book should be deposited with the indictment, together with particulars showing precisely the parts complained of. This provision was embodied in the Indictments Act of 1915.

The Banned Books of England

"This case comes before us in no sense upon its merits, but upon a purely technical question, it may be said though a technical question of substantial importance, as it seems to me, for reasons I shall give presently. But the decision we have to pronounce is one which is quite apart from any question whether any wrong has or has not been done by the defendants."

He concluded:

"Now I desire to end as I began, by saying that I wish it to be understood—of course every lawyer would understand it—that we have expressed no opinion upon a matter of which we have no materials for expressing an opinion upon, namely, whether this is the most filthy and obscene book that was ever published, or one of an entirely innocent character. We know nothing about it; we are deciding a dry point of law upon criminal pleadings, which really is quite apart from the actual merits of the particular question. In my opinion, the judgement must be reversed."

The defendants were of course released. But the trial enabled Annie Besant's husband to deprive her of the society of her daughter for ten years, and she was grossly insulted by Sir George Jessel, the Master of the Rolls.

While the trial was pending books sent out from Bradlaugh's publishing house were seized in the post.

EDWARD TRUELOVE

Furthermore Edward Truelove's shop in High Holborn was raided and copies of *Moral Physiology*

The Injustice of the Law

by Robert Dale Owen and of another pamphlet *Individual Family and National Poverty* were seized by representatives of the Society for the Suppression of Vice who instituted a prosecution. He was tried twice. The first time the jury disagreed. But at the second trial he was found "Guilty" and sentenced to four months imprisonment as well as a fine of £50. Although nearly seventy years of age he was imprisoned with common felons and made to pick oakum, and had to sleep on a plank bed. Moncure D. Conway, the rationalist preacher, spoke of the Society for the Suppression of Vice words which have a very general significance:

"They must always be attitudinizing as purifiers of society. If the nests of crime and vice are trampled out, and the funds begin to fall low, they must try and make their subscribers think there are nests where there are none, and, knowing well how unpopular Freethinkers are, how few friends they have in high places, they found among them a book which repeated the details of ordinary psychological and medical books—a book whose pages, with all their faults, are nowhere of biblical impurity. . . . The old privilege of the orthodox to imprison their opponents—the privilege so loved, but lost must seem about to come back again, when it has been decided that facts familiar in the libraries of medicine and science cannot be printed by Freethinkers in a form accessible to the people without punishment."¹

¹ Brown and Leech, *op. cit.*, page 200.

CHAPTER VI

REFORM

HOW FAR SHOULD DEMAND FOR REFORM GO?

WE have now completed a fairly detailed examination of the problem before us in its historical, its legal, and its social aspects. It remains to consider what degree of reform it is proper to ask for, or reasonable to expect.

We may note five significant stages in the possible attitudes of the law in this matter. In ascending order of severity they are as follows:

1. *No law regarding obscene publication.*

This we may call the early eighteenth century position.

2. *Pornography only forbidden.*¹

This we may call the Campbell or pre-Cockburn position.

3. *Bona fide expression of opinion couched in restrained language only allowed.*

This we may call the Stephen position for he clearly indicates that in his view the law should go no farther than this.

¹ In *The Nineteenth Century* for April 1929 Virginia Woolf advocated that the law should be restricted to pornography. Lord Darling in the same number takes the opposite view. There are also articles by Havelock Ellis, E. M. Forster, and the Editor.

Reform

4. *All writing on sexual matters which may cause harm forbidden.*

This we may call the Cockburn position.

5. *All writing on sexual matters which tends to "immorality" forbidden.*

This we may call the Bradlaugh trial position.

PORNOGRAPHY

To appreciate the difference between the first and second of the above positions it is necessary to say a word or two on the subject of pornography. Lord Campbell was very definite that only pornography came within the legal definition of obscenity and his definition of pornography was as narrow as it could be. Most people would stigmatise as pornography any work whose main purpose was to excite sexual passion. The classic example of this type of writing is John Cleland's *Memoirs of Fanny Hill* (1750). Cleland was born in 1709 and left Westminster School¹ for the Consular and East India Services. *Fanny Hill* was his first novel and such was the mildness of the prevailing attitude towards obscenity that he was given a pension on condition that he did not repeat the offence. The book deals with the familiar theme of the young country girl come to Town and is composed of a series of descriptions of amorous adventures. At first

¹ In Shadwell's *Virtuoso* (1676) Snarl explains his idiosyncrasies to Mrs. Figgup with reference to his attendance at this academy.

The Banned Books of England

it is quite readable and perhaps not without some literary merit. Indeed the account of Fanny's experiences with her first lover at Chelsea are to my mind superior, at least from the instructional point of view, to the famous passages in *Lady Chatterley's Lover* which excited Bernard Shaw's admiration.

But the difficulties of his task soon begin to weigh on the author. Through the lips of his heroine he confesses:

I imagined, indeed, that you would have been cloyed and tired with the uniformity of adventures and expressions, inseparable from a subject of this sort, whose bottom or groundwork being in the nature of things eternally one and the same, whatever variety of forms and modes the situations are susceptible of, there is no escaping a repetition of near the same images, the same figures, the same expressions, with this further inconvenience, added to the disgust it creates, that the words JOYS, ARDOURS, TRANSPORTS, ECSTASIES, and the rest of those pathetic terms so congenial to, so received in the PRACTICE OF PLEASURE, flatten and lose much of their due spirit and energy by the frequency they indispensably recur with, in a narrative of which that PRACTICE professedly composes the whole basis.

As the book proceeds descriptions of brothel scenes are presented with increasing rapidity and become so boring that I have never been able to finish them. Cleland's subsequent effort *Memoirs of a Coxcomb* is an altogether less lurid affair.

The dreariness of even the most esoteric porno-

Reform

graphy is borne out by the evidence¹ of those who have read the works of the Count de Sade—the Divine Marquis as he was fatuously styled by his admirers. I have never progressed beyond the shorter and relatively saner *Justine* of 1791: the later version in four volumes and *Juliette* in six, not to mention other works, defeat me. A nightmare to be tolerable must be brief. Good however can come out of evil. These volumes are of scientific interest to the alienist, and the fact that their contents were not unknown in France during the nineteenth century accounts perhaps for the French intolerance of the corporal punishment of children. The inaccessibility of these works in this country has I think facilitated the task of those, from Swinburne to the surrealists,² who would inflate them into a serious contribution to some system of philosophy or aesthetics. A glance at the actual pages bursts the bubble.

The common pornographic publications in the English tongue trundled openly abroad and secretly at home with their absence of literary competence and

¹ Descriptions and quotations are given in:

The Romantic Agony, by Mario Praz (Oxford University Press, 1933). *The Marquis de Sade*, by Otto Flake (Peter Davies, 1931).

² At page 81 of David Gascoyne's *A Short Survey of Surrealism* (Cobden-Sanderson, 1936) we read: "Their attitude towards sex is almost identical with that of the Marquis de Sade or William Blake." Another adopted father of the movement is the Comte de Lautréamont. His *Chants de Maldoror* (the fruit of a deranged mind) were translated into English by John Rodker in 1924.

The Banned Books of England

their misprints verge on the unreadable. The fact that these publications find a ready market among British and American tourists, taken in conjunction with our constant prating about the "purity" of our Press and literature, does not fail to attract the notice of foreigners as an example of the nauseating hypocrisy which is the worst strain in the Anglo-Saxon character.

The dullness of pornography provides a clue to its essential nature. It is a substitute for experience and nothing more. Its appeal is to the repressed and the thwarted who are unable to satisfy their sexual desires in the world of reality, by reason of misfortune, ignorance, lack of enterprise, or inability to effect the necessary modifications and compromises, and who give up the struggle and seek satisfaction in a world of fantasy.¹ There is a corresponding sub-literature which caters for other unadjusted instincts by descriptions of crime, or adventures, or social success. Indeed a similar function would be performed by a book containing descriptions of feasting intended to be read by people accustomed to bad and insufficient food.² The business of true literature is very different. Where it is scientific and educational its business is to impart factual information and encourage the discovery of

¹ For example, the exploits of the "Divine Marquis" in the world of reality were of a very feeble order. The fact that he spent so much of his life in prison to some degree accounts for the compensatory extravaganza of his works.

² Michael Fielding suggests to me that the elaborate description of banqueting in *The Arabian Nights* is an actual example on the assumption that the tales were originally told among slaves.

Reform

more. Where it is artistic its business is to take experience, enhance it, overflow it in further creation, and introduce into it an order and a beauty which either is lacking in the world of reality or is imperceptible except to the eye of the artist. It is none of the artist's business to produce works which are a substitute for life and nothing more. If he does so he bemeans himself. That is the primary objection to pornography and all sub-literature. The common fear that the taste for such books is contagious and likely to be spread by the books themselves is a mistake. The proper cure for the phenomenon of pornography is rational sex education and the creation of social conditions which will obviate sex frustration. Whether pornography has a legitimate function as providing a means of *katharsis* for incurable or inevitable maladjustments is an open question. Havelock Ellis, defining obscenity as what is "off the scene" of the stage of life and normally hidden, goes so far as to consider that its expression can have in appropriate circumstances a definite cultural and social value.¹ Certainly legal suppression adds the lure of the forbidden to books that are undesirable because they provide a fantastic solution of the conflict between the individual and reality—a conflict which should be solved by the individual moulding reality on the one hand and modifying himself on the other.

¹ See *The Revaluation of Obscenity* in *More Essays of Love and Virtue*, by Havelock Ellis.

The Banned Books of England

Again the Puritanical objection to pornography appears to rest mainly on the ground that it is pleasant. "The seeker after dirty books" is on the quest of pleasure in things sexual and it is the business of all right-minded people to put obstacles in his path. Similarly love-making in the open air¹ is wrong if it is more pleasant than indoors and it is wicked to experiment in coital position if the aim is pleasure; though presumably both these things might be excusable if some utilitarian object were in view. This attitude is not likely to carry much weight² in view of the growing appreciation of the evil, individual and social, which arises from the disassociation of sex and pleasure. Lastly the true blue liberal must advocate the toleration of pornography if he is to be loyal to his principles, and it is a matter for regret that liberal writers have sung so small about the law of obscenity.

The above indications of the lines on which a claim for the legal toleration of pornography could be made out must not be allowed to confuse that question with the claim of genuine literature to

¹ Crates the Cynic was surprised under the portico of a temple in a situation which might have embarrassed a lesser man. "What doest thou?" asked his interrupter. "Hominem planto" replied the unperturbed philosopher.

² It is however a hardy annual. In her address to the jury at her trial Annie Besant had occasion to say:

"The notion that pleasure *qua* pleasure is wrong is an ascetic notion, which is at the base of a large amount of the profligacy of the present day."

Reform

freedom in relation to the subject of sex. The two claims are often confused to the prejudice of the latter which is far the more important. Even the most uncompromising champion of liberty fails to be very moved when such drivelling twaddle as *The Indiscretions of a Young Girl*, a trans-Atlantic importation recently prosecuted at Bow Street, is condemned. It is the dignity of the law rather than our pride as free citizens that is outraged on such occasions. The strongest objection to any law directed against pornography is that it is always liable to be twisted into a weapon for the suppression of unpopular ideas. Lord Campbell's Act itself is of course the outstanding example. The proper line of attack on pornography is not by legal suppression but by lifting the ban on legitimate writing on sexual matters. To quote Walter Gallichan:¹

It is this constant over-insistence upon the dangerous nature of any discussion of sex themes that directly encourages the demand for pornographic writings among the prurient. Persons affected by the obscenity complex ban scientific works, which are the best antidotes to loose literature. Nothing can be more muddle-headed and prejudicial to true purity and refinement of feeling than some of the tactics of the self-appointed custodians of morality. Until the apostles of purity join hands with the scientists, there will be little improvement in the low status to which the sexual life has been degraded in the "advanced" nations.

¹ *Op. cit.*, page 147.

The Banned Books of England

Ernst and Seagle consider that if the obscenity laws were abolished the market for pornography would be spoiled because it would lose its "boot-leg" value. They however go some way to meet more apprehensive opinion by rather diffidently suggesting a minor's pornography law under which it would be criminal to communicate pictorial pornography to a person under eighteen years.¹

SAFETY FIRST?

It is essential however that the case for the toleration of pornography, whether it is good or bad, should not be confused with the claim that a reputable author should be allowed freely to express his views to all classes of the community however "indecent," "immoral" or "vicious" those views may be in the eyes of generally accepted opinion among the aged and the orthodox. As we saw when dealing with the "Bradlaugh trial position" in the previous chapter, this claim can only be contested by those who consider that existing institutions and conventions can neither be defended by reasonable arguments nor improved by rational criticism, and to reject it is to allow the advocates of *status quo* to declare certain subjects of their own choosing as sacrosanct from the influence of knowledge and reason. The claim is inconsistent with the Cockburn principle that any

¹ *O.p. cit.*, Chap. xiv.

Reform

writing about sex must be incapable of doing any harm in any circumstances. That a sense of responsibility is proper both as regards manner and occasion of presentation most writers on sexual subjects would agree; but I see no reason why the law should attempt to make this responsibility a legal obligation in a country where brewers are permitted to flaunt posters of bath-size guinnesses in front of potential drunkards. We must remember that all writing that is vigorous and vital may cause some harm somewhere. This is true of practically all subjects and not only of sex. If I write a book on mechanics it may tempt a boy to buy a bicycle and he may go out on it and get killed. If society is to be healthy and vigorous a policy of "Safety First" is impossible in literature. The question of proper caution must be left to the writer and the critic; it is not one that the law can usefully deal with and sex is no exception to this generalisation. Indeed at the present time writers on sexual matters can be relied on to have an even greater sense of social responsibility than most, for it is a field where there are more kicks than halfpence and few are likely to enter it except for altruistic reasons.

"GRAVITY" v. "LEVITY"

We may take it that the legal toleration of pornography whatever its merits is scarcely practical politics at the present time, and we have rejected numbers 4

The Banned Books of England

and 5 of the alternative attitudes to sexual literature enumerated on pages 150 and 151. We are left with the choice between 2 and 3. Can we admit that the writer on sexual subjects should be legally compelled to be (*a*) *bona fide* in his expression of opinion, (*b*) restrained in his language? The trouble about the first qualification is the absence of any objective test and the fact that the attribution of *mala fides* and moral turpitude is one of the most time-honoured and most used weapons in the armoury of controversy. It seems a little thing to admit the necessity of the second qualification, and the present writer has never experienced any difficulty in complying with orthodox ideas of what is right and proper as regards *style* when talking about sex. Others however feel very strongly about this matter. They say that compliance in this matter results in a portentous gravity of style which leads to unfortunate psychological associations in the reader. If, they say, his authors always become solemn, dull, and boring as soon as sex is mentioned the reader will come to believe in time that these attributes are inseparably connected with love, and they will be displayed in his love-making. I think there is a good deal in this argument. Certainly the gravity which convention imposes on books about sex prevents them from circulating in quarters where they would do a great deal of good. It is necessary to cultivate a sense of humour in regard to these matters and face realities. Everybody knows that there exists a whole corpus of

Reform

unwritten bawdy stories which are freely circulated among both sexes in all classes of society. Perhaps this spoken literature will one day be committed to writing. Perhaps the task is even now being carried out. It consists of a vast number of anecdotes, limericks, and verses most of which are traceable to a comparatively small number of stock forms which are varied from time to time to give them a tang of topicality and to suit the tastes of different audiences. Some of the situations which form the gist of these jests are as old as Chaucer or older. The official pretence of universal squeamishness hardly bears examination. While this book is being written *The Country Wife* is being played at the Old Vic to packed houses who show every sign of sophisticated enjoyment of Wycherley's broadest sallies. T. E. Lawrence's frank treatment of homosexual incidents in *The Seven Pillars of Wisdom* has offended no one. So far as I am able to make observations the vocabulary of the London streets seems to be as vigorous as when I was a boy, in spite of thirty years intensive propaganda in favour of "uplift" and "refinement" by the State Schools and latterly by the B.B.C. Recently however I saw a little chap doing his best to rise above the crudities of his native tongue by writing "pennis" (*sic*) on a railway paling. A noble lord, it will be recalled, once remarked that in his observations the chief effect of popular education was that the rude words appeared *lower down* the wall. Authority how-

The Banned Books of England

ever is very solemn about this matter of vocabulary. It seems that the introduction of “rude words” was the principal reason for the prosecution under Lord Campbell’s Act of Norah James’s *The Sleeveless Errand*. The publishers, The Scholartis Press, defended the book but it was condemned by Sir Rollo Graham Campbell at Bow Street on March 4, 1929. The late Sir Percival Clarke, for the prosecution, took particular exception to one of the characters in the novel saying: “For Christ’s sake give me a drink.”¹ Desmond MacCarthy in *Life and Letters* for May 1929 says of this book:

In my own opinion it was a novel which every youth and girl tempted to join a tippling, promiscuous set such as the author describes might well read with profit; I know several sensible parents who have borrowed it to lend it to their children.

In 1931 the same firm deemed it prudent to publish privately a reprint of the 1796 edition of Francis Grose’s *A Classical Dictionary of the Vulgar Tongue* edited and annotated by Eric Partridge. The book now issues from the Oxford University Press. Vocabulary is largely a question of fashion. In the Geneva Bible of 1560 (called the Breeches Bible because of its use of the word “breeches” at Gen. iii. 7) 1 Cor. vi. 9 concludes with a word now regarded as very obscene.

¹ See *The Times* for February 22 and March 5, 1929.

Reform

METHOD

We would therefore seem to be driven to the conclusion that what we have called the Campbell standard is the minimum that should be demanded in the way of reform. We may now consider the methods by which this reform could be brought about. They may be considered under three headings (*a*) Restricted publication; (*b*) Legislation; (*c*) Legal appeal.

Restricted publication

The expedient of restricted publication is already employed to a certain extent. Certain books are only sold by their publishers to limited classes of people. The English translation of Krafft-Ebing's classic work for example is sold only to members of the medical and legal professions. *Tagebuch eines halbwüchsigen Mädchens*, prefaced by Freud, was similarly restricted except that it was available to the educational profession as well. In other cases the circle of possible purchasers is widened to include "serious students of psychology and sociology." For Van de Velde's *Het volkomen Huwelyk* the written recommendation of a doctor is required. The English translation of René Guyon's *La Légitimité des Actes Sexuels* again "is strictly limited to members of the medical profession, psycho-analysts, scholars and such adults as may have a definite position in the field of physiological, psychological or social research."

The Banned Books of England

The extent to which this restriction is sometimes taken is illustrated by an incident recorded by Walter Gallichan:¹

When I wished to buy a copy of Dr. Wilhelm Stekel's two volumes on *Sexual Frigidity in Woman*, published in America, and sold in London, I had to obtain a letter from a medical man, professing that he desired to purchase the volume. Such a situation is ludicrous. A life-long student of sexual psychology, and the writer of twelve books on the subject, is not permitted to buy the work of another psychologist. These penalties upon the acquisition of knowledge are barbaric.

This expedient must not be regarded as evasion of the law but as compliance with it. It will readily be appreciated that, once the conception of literary obscenity is admitted by the Courts, what may be held to be obscene in one set of circumstances may not be held to be so in another. In Hicklin's case²

¹ *Op. cit.*, page 147.

² This must have been the picture (No. 484 in the Catalogue) which distracted the worldly George Locke from following the virtuous Alton to the "St. Sebastian" after Guido Reni when they entered the Gallery in Charles Kingsley's novel:

But my attention was in a moment concentrated on one figure opposite me at the furthest end. I hurried straight towards it. When I had got half-way up the gallery I looked round for my cousin. He had turned aside to some picture of a Venus which caught my eye also, but which, I remember now, only raised in me a shudder and a blush, and a fancy that the clergymen must really be as bad as my mother had taught me to believe, if they could allow in their galleries pictures of undressed women. I have learned to view such things differently now, thank God.

Perhaps the shade of Sir Robert Lush enjoys Elysium the more

Reform

counsel instanced a picture of Venus in the Dulwich Gallery and Mr. Justice Lush remarked:

"It does not follow that because such a picture is exhibited in a public gallery photographs of it might be sold in the streets with impunity."

In the same case Lord Chief Justice Cockburn himself said:

"A medical treatise with the illustrations necessary for the information of those for whose education or information the work is intended, may in a certain sense be obscene and yet not the subject for indictment; but it can never be that these prints may be exhibited for anyone, boys and girls, to see as they pass. The immunity must depend upon the circumstances of the publication."

In the words of Lord Campbell's Act the articles condemned must be "of such a character and description that the publication of them would be a misdemeanour and proper to be prosecuted as such." In his judgement Mr. Justice Lush suggested that the latter qualification was intended to safeguard standard works which although obscene ought not to be prosecuted. It is probable that if adequate attention were given to the point that in law many "obscene" books are not "proper to be prosecuted" many of the anomalies of the law of obscene libel would be rectified.¹ peaceably since the Venus, although still in possession of the Governors of the College of God's Gift at Dulwich, is no longer shown to the public.

¹ The point is elaborated by Desmond MacCarthy in the papers referred to at item 23 of the Bibliography.

The Banned Books of England

The importance of the circumstances of publication is borne out by the later case of *Das Sexuelleben unserer Zeit* by Iwan Bloch, the celebrated Berlin doctor. When the publishers of the English translation were proceeded against under Lord Campbell's Act in 1909 the scientific and *bona fide* character of the book was not contested. But a police officer had purchased a copy for a guinea in the ordinary way, without any inquiry being made. Had it been otherwise, the prosecution suggested, the proceedings might never have been taken, having regard to the nature of the work. In making an order for destruction the Bow Street Magistrate (Mr. Curtis Bennett) said that the book was sold to anyone who asked for it, and it could not be said that a book of that character should be so sold.¹ The sale of the book is now restricted to members of the medical, legal and

¹ *Daily Telegraph*, January 7, 1909. Compare Mr. Ronald Powell's remarks on the manner of publication and advertisement of *Sane Sex Life* quoted on page 50. A circular advertising *The Encyclopædia of Sexual Knowledge* edited by Norman Haire, Ch.M., M.B. (Francis Aldor, 1934), was the subject of a successful obscenity prosecution under section 63 of the Post Office Act of 1908 although the work itself has never been attacked. Mr. Dummett giving his decision at Bow Street on July 6, 1934, said:

"So far as he knew, the book itself might be a scientific work, but the pamphlet stood on an altogether different footing. . . . The object of the pamphlet was evidently to increase the sale of the book by attracting the attention of members of the public whose interest in the subject was very far from being scientific."

See *The British Medical Journal* for July 14, 1934, and Mr. Haire's disclaimer of responsibility for the circular in the issue of July 21st. Note the Indecent Advertisements Act, 1889.

Reform

scholastic professions. It is of interest to note that Sir Archibald (then plain Mr. A. H.) Bodkin, whose zeal against "obscenity" has received our attention, was briefed on the side of the angels in this case. It may be noted that Bloch's *Geschlechtsleben in England*, a voluminous work full of references of considerable historical and sociological interest, has never been translated into English in its entirety. John Addington Symonds' learned and discriminating treatment of Greek pederasty, *A Problem in Greek Ethics*, written in 1873 when his mind was occupied with his *Studies of Greek Poets*, has always been published privately.¹ The corresponding *Problem in Modern Ethics* (1891) was similarly treated.

The practice of pricing certain books at a much higher figure than would be fixed by commercial considerations is also a form of restricted publication, and one which appears to entail a degree of immunity from prosecution² although the price of one guinea did not save Edward Charles's book.

It is possible to look to some development of this system of restricted publication to meet the situation which faces literature dealing with sexual matters as

¹ See also Book v Chapter VII of *Greek Thinkers* by Theodor Gomprez (1902). The effort to suppress unpalatable historical facts in the supposed interests of morality defeats its own object because, never more than partially successful, it causes confusion of counsel. I have heard the undeniable existence of a homosexual element in Hellenic culture used as an argument in support of practices which incurred almost as much social obloquy in the age of Pericles as they do today.

² Cf. pages 53-55 *supra*.

The Banned Books of England

a result of the present law and its administration. But the objections are obvious and I think overwhelming. In the first place it is hard enough to sell intelligent books now-a-days without the additional handicap of a restricted market or an uneconomically high price. It should be noted that if the publisher decides to sell only to certain professions the book will only be stocked and displayed by the most exceptional booksellers, and it is to the booksellers that the publisher looks to a very great extent to introduce his wares to the reading public. A high price tends to have the same result. But above all this the system is a negation of all democratic and liberal principle. It means that certain books are restricted not only to the educated in the orthodox sense but to the well-to-do educated.

The effect of restricted publication and the high pricing of books on sexual subjects has already been serious enough. Ideas that have been current coin among the well-to-do educated for more than a quarter of a century are unfamiliar to the equally well-educated (so far as most subjects are concerned) of the less affluent ranks of society. The effect of such a prohibition of thought is serious:

Now we have no other means of controlling our instincts than our intelligence. And how can we expect people who are dominated by thought-prohibitions to attain the psychological ideal, the primacy of the intelligence? You know too that women in general are said to

Reform

suffer from so-called 'physiological weakmindedness,' i.e. a poorer intelligence than the man's. The fact itself is disputable, its interpretation is doubtful; but it has been argued for the secondary nature of this intellectual degeneration that women labour under the harshness of the early prohibition, which prevented them from applying their mind to what would have interested them most, that is to say, to the problems of sexual life.¹

Restricted publication means that books advocating and discussing the sane and rational attitude to sex which is springing up in the light of progress in natural science, anthropology and psychology would be kept from those who need them most. It may be right and proper to resort to this expedient in special cases but the system cannot be looked upon as an avenue of escape from our present difficulties.

There is one precaution however which might receive the attention of publishers. Disreputable shops whose business consists in sailing as near to the wind as they dare in selling pornography and near-pornography are beginning to stock and display reputable books on sexology. Perhaps they find it profitable; perhaps it lends a spurious dignity to their trade. I first saw the new edition of Ellis's great work in the window of a shop of this description. The juxtaposition is an unhappy one. In the first place it must create an impression unfavourable to reputable authors in the public mind. Secondly from time to time, pre-

¹ *The Future of an Illusion*, by Freud (Hogarth Press, 1928), p. 83.

The Banned Books of England

sumably when there is a slump in serious crime, these places are raided by the police. A barrow-load of reading matter of varying degrees of spiciness is carried off to a police court. The unfortunate magistrate reads it all and there is a solemn dividing of the sheep from the goats. As many as a hundred volumes are sometimes involved and it seems probable that he is driven to some rule-of-thumb method of selection. Anyhow, as we have seen in the case of *The Sexual Impulse*, a work of scientific and social importance may fall on the wrong side without either author or publisher having a chance to defend it. This is a sad affront to any serious author, and, what is worse, an invitation to the police to prosecute the publisher. Surely the book-trade could devise some method for keeping reputable books out of such shops.

Legislation

The Gordian knot could of course be cut by fresh legislation. But to whom can we look to support such legislation? The present law does not interfere with the right wing or the interests it represents. No book bearing the imprimatur of a bishop or a titled social worker would ever be prosecuted. If a book of literary interest such as *Ulysses* falls under the ban it is readily obtainable by the privileged classes. The law does not even seriously incommodate the traffic in polite and highly priced pornography. If we turn from the right wing to the representatives of Labour we are too

Reform

likely to find indifference replaced by ignorance, superstition and susceptibility to lower middle class ideas of respectability. I do not want to suggest that Conservatives are likely to be conspicuous even for enlightened self-interest in this matter but there is reason to suppose that the little intelligent thought that can be looked for is more likely to come from them than from the Labour Party. For instance, all the speeches that have shown any understanding of the important connection between maternal mortality and abortion have so far come from the Conservative benches. The case of the Blasphemy Act provides a melancholy parallel. When the first Labour Government came into office it was confidently expected that this hoary iniquity would be removed from the Statute Book. "In November 1929 a bill was introduced into the House of Commons providing that no criminal proceedings should be instituted in any court for schism, heresy, blasphemy, blasphemous libel or atheism. But the bill was withdrawn by Mr. Thurtle in view of the Solicitor-General's announcement that the Government would insist on an amending clause making it an offence to publish scurrilous matter outraging religious convictions. Mr. Thurtle pointed out that, while at present it was possible to argue before the courts that a blasphemy charge was a seventeenth-century survival which had no modern force behind it, the proposed clause would lead to an extension of the existing law, rather than a modernisa-

The Banned Books of England

tion of it.”¹ One would have supposed that the suggestion made in *The Sexual Impulse* case that there was something particularly deplorable in putting a book on sexual matters into the hands of a member of the working class, or in people of the working class reading such books, would be resented by their supposed representatives in the legislature, but there is little sign of it. Such suggestions *are* resented and bitterly resented by the educated and intelligent men and women of that class. As to fools who will misunderstand anything and twist it to their own hurt and damage, they are to be found in all ranks of society.

The prospects of reform by legislation are not too bright. It is the fashion to regard the Victorians as pastmasters in prudery and smug hypocrisy. But when we remember the strength of the opposition to Lord Campbell’s Act in both Houses of Parliament we should not be too contemptuous of the Victorian legislator. If such an Act were introduced today would there be much opposition? Would not members be shuffling behind one another in their anxiety not to be in any way associated with “dirty” books while the paterfamiliases of the Trade Unions were sonorous in their demand for “pure” literature.

There is a great danger which should not be overlooked that any legislation on this matter would be in the nature of a compromise and in the result make

¹ *Keeping it Dark or the Censor’s Handbook*, page 24.

Reform

things worse than they are already. In particular there would be the risk that some measure of censorship in its true form—i.e. before publication—might be surreptitiously introduced. If it were not overdone something in this line might well tend to provide both author and publisher with that quiet life which we all so much desire nowadays. But it would be fatal to the development of literature, art and science. The evils and absurdities of literary censorship have been exposed for all time by Milton in his *Areopagitica*. There is no need to repeat his arguments.

Again any suggestion to set up some board, committee, or body to take the place of the Courts of Law in this respect or even to advise them, should be regarded with the deepest suspicion. Bad as the Courts are such a body would almost certainly be worse. It would probably consist of eminent literary men and women of incredible respectability. It is the business of vital literature to deal with the ideas of tomorrow rather than today. Anyone who has experience of literary gatherings knows that literary men, once they have become eminent, tend to trade in the ideas not of today but of yesterday. Official bodies are admirable concerns for dealing with such things as drains and transport but creative thought and beauty are outside their province. Both wither and die in the official atmosphere unless plenty of fresh air is constantly brought in from outside. Monopoly is fatal, and any body set up to deal with the morality

The Banned Books of England

of literature would in its nature have to be monopolistic. Finally we must remember that (to use Heywood Brown's words¹):

As things are constituted it is pretty safe to assume that any given censor is a fool. The very fact that he is a censor indicates that.

The present system has at least the merit (from the liberal point of view) of being spasmodic and incompetent. Legislative measures other than a simple reversal of the Cockburn judgement, might well add efficiency and zeal to present ills.

One small legislative reform would I think command a very general measure of consent. It is surely in the public interest that any case in which the publication of a book is defended on the ground that it is of artistic, scientific, educational or social value should be heard in the High Court. In such cases far more than the private rights or wrongs of publisher, bookseller or author is at stake: sometimes nothing less than the welfare and reputation of English literature and learning.

Legal Appeal.

This brings us to the third possibility of reform: an appeal to the House of Lords with a view to overriding the Cockburn judgement. This of course would have to be done on a specific case as it arose and the cost would be great. It has been suggested to me that a

¹ *Op. cit.*, page 296.

Reform

procedure analogous to that taken in *Powell v. The Kempton Park Race Course Co.* might be followed. Some thirty years ago, the Anti-Gambling League, through their secretary Hawke, took proceedings against Dick Dunn, the best known ready-money bookmaker of his time, for making a book in Tattersall's Ring at Hurst Park. The Justices very naturally dismissed the case. The Ring had been in existence for years; no one had questioned its legality. Hawke got a case stated for the Divisional Court, and the Divisional Court overruled the Bench, and sent the case back with a direction to convict. The consternation in the betting world was terrific. But the ingenuity of a lawyer put it all right again. Powell, a debenture holder in Kempton Park Race Course Co., brought an action against the Directors, claiming an injunction against them, for imperilling his security by permitting illegal betting. This, being a civil matter, could be taken via the King's Bench or Chancery Division to the Court of Appeal and House of Lords. It was, and the Lords put the matter right. The Lords held *inter alia* that Dick Dunn could not be said to be occupying a "place" within the meaning of the Act, as he was not anchored to the freehold anywhere, but was free to move about.

The prospect of challenging the Cockburn judgement is an attractive one and there are chances of success. The American Courts, as we have seen, have given a definite lead in the direction of enlightenment

The Banned Books of England

and liberty. Even lawyers are by no means satisfied with the present state of the law. On the other hand some lawyers, very sympathetic to the liberal standpoint, are dubious about the wisdom of challenging any established interpretation of law, however illiberal, in a higher court at the present time. To do so they suggest is to invite an adverse judgement which at best will give added authority to the existing state of affairs and which at worst may lay down a ruling even more reactionary. If however it were possible to obtain a restatement of the law reverting to the definition of obscenity which Lord Campbell stated to be the legal one in 1857, the serious writer whether of fiction or non-fiction would have little to complain about. He does not wish to write books "for the single purpose of corrupting the morals of youth and of a nature calculated to shock the common feelings of decency in any well-regulated mind."

SEX EDUCATION

It is well to distinguish the claim of the writer on sexual subjects to freedom from legal supervision from a claim to unrestrained license. In the first place claims to liberty based on theoretical considerations unrelated to social conditions defeat their own object if in practice they lead to consequences which are indefensible in the eyes of society as a whole. For instance if after every performance of *Tristan and*

Reform

Isolde at Covent Garden a number of couples, intoxicated by the death-lust implicit in Wagner's music, went out and committed suicide, the opera would be suppressed.¹ Secondly, it must be remembered that the conception of obscenity, albeit a subjective one,² is very real to those influenced by it. There are many people in this country today, rational and civilised in a general way who, when a sexual proposition is presented to them, blush, stutter, become irrational, hysterical and even violent. Their reaction is precisely that of the average fifteenth-century man presented with a rational argument on transubstantiation. This mentality is chiefly found among the aged and is happily becoming rarer as more and more children brought up under modern conditions³ attain adult age. This brings us to the

¹ The conception of a censorship of music is not wholly fantastic as witness the *Philadelphia Daily News* for April 6, 1935, with reference to a performance of *Lady Macbeth of Mensk*:

Some obscene trombone notes so shocked certain ladies at the opening night of Shostakovitch's opera that a large number walked out. As the first trombone player refused to play the notes a substitute did so.

² "With some knowledge of the psychologic processes involved in acquiring a general conception it is easy to see how courts, as well as the more ignorant populace, quite naturally fell into the error of supposing that the 'obscene' was a quality of literature, and not—as in fact it is—only a contribution of the reading mind." —Schroeder, *op. cit.*, page 271.

³ Holbrook Jackson (in *The Fear of Books*) recounts a tale from *Punch*. Father is enjoying the latest "improper" novel and suggests to his wife that it might be as well to keep it away from their daughter. "Too late," replies the good lady, "she wrote it!"

The Banned Books of England

one fundamental cure for the evil which we have been discussing—*sex education*. Only let a sufficient number of people be educated in sexual matters in the way that they are in other subjects, and so be brought to a rational, sane, and healthy outlook with resulting sexual happiness in the majority of cases, and the whole chimera of literary obscenity will disappear as a “false creation proceeding from a heat-oppressed brain.” For no man true to the *zeitgeist* of the twentieth century can examine this matter and leave it without recognising that all this net of law and pother of busybodies is set up to catch a phantom. But few will go so far as yet. I have heard in conversation an author, whose work I have defended in this book, although outraged at the condemnation of his own work, declaiming hotly for the condemnation of “real obscenity.” In like manner those who in the seventeenth century were concerned to defend this or that witch, or introduce some modicum or other of sense into the general attitude to witchcraft were loud in their assertion of the existence of witchcraft; as witness John Webster in *The Displaying of Supposed Witchcraft* (1677):

If I deny that a witch cannot fly in the air, nor be transformed or transubstantiated into a cat, a dog, or a hare, or that a witch maketh any visible covenant with the devil or that he sucketh on the bodies, or that the devil hath carnal copulation with them, I do not thereby deny either the being of witches, nor other properties

Reform

that they may have, for which they may be so-called: No more than if I deny that a dog hath rugibility (which is only proper to a lion) doth it follow that I deny the being of a dog.¹

Public opinion is not yet prepared to be as rational about obscenity as it is about witchcraft. We must have patience while education does its work. Of course we are in a vicious circle if this process of education is to be hampered by the law; so that besides supporting sex education we must press for legal reform either by legislation or judicial decision.

In conclusion I would recommend to all who have come to a realisation of the importance of this question the slogan:

BACK TO CAMPBELL AND MORE SEX EDUCATION

¹ Quoted from Schroeder, *op. cit.*

APPENDIX

I. IMPORTANT CASES

		PAGE
180	1708	<i>R. v. Read</i> 11 Mod. Rep. 142
	1727	<i>R. v. Curl</i> 2 Stra. 788
	1819	<i>R. v. Mary Cartile</i> 3 B. and Ald. 167
	1853	<i>Dugdale v. R.</i> 1 E. & B. 435
	1868	<i>R. v. Hicklin</i> L.R. 3 Q.B. 360
	1872	<i>Steele v. Brannan</i> L.R. 7 C.P. 261
	1877	<i>R. v. Bradlaugh</i> 2 Q.B.D. 569
		on appeal <i>sub nom. Bradlaugh v. R.</i>
		113, 141, 142, 145-148,
		151, 158
		3 Q.B.D. 607
		34 L.J. 132
	1899	<i>R. v. Hirsch</i> 52
	1906	<i>R. v. Barracough</i> 1 K.B. 201, C.C.R.
	1907	<i>R. v. De Marry</i> 1 K.B. 388
	1932	<i>R. v. De Montalk</i> 23 Cr. App. Rep. 182

UNITED STATES

		PAGE
	<i>Pennsylvania v. Sharpless</i>	101
	<i>U.S. v. Bennet</i>	115
	<i>U.S. v. Keenerley</i>	116
	<i>Halsey v. N.Y. Society</i>	40, 120
	<i>N.Y. v. Donald Friede and Covici Friede</i>	Bib. item 40 (a)

	PAGE		PAGE
<i>U.S. v. Mary Ware Dennett</i>	117		
<i>U.S. v. Married Love</i>	117, Bib. item 40 (b)		
<i>U.S. v. Contraception</i>	118		
<i>Swearingen v. U.S.A.</i>	118		
<i>U.S. v. Ulysses</i>	27, 115, Bib. item 31		
		II. STATUTORY PROVISIONS	
1824 Vagrancy Act	5 Geo. IV., c. 83, s. 4		
1838 Vagrancy Act	1 and 2 Vict. c. 38, s. 2		
1839 Metropolitan Police Act	2 and 3 Vict. c. 47, s. 54		
1847 Town Police Clauses Act	10 and 11 Vict. c. 89, s. 28		
1857 Obscene Publications Act	20 and 21 Vict. c. 83		
		23-24, 93, 103, 123,	
1876 Customs Consolidation Act	39 and 40 Vict. c. 36, ss. 32-38, 42 and 207		
1888 Law of Libel Amendment Act	51 and 52 Vict. c. 64, ss. 3, 4, 7 and 8		
1889 Indecent Advertisements Act	52 and 53 Vict. c. 18, s. 3		
1907 Public Health Acts Amendment Act	7 Edw. VII., c. 53, s. 81		
1908 Post Office Act	8 Ed. VII., c. 48, s. 63		
1915 Indictments Act	5 and 6 Geo. V., c. 90		
		Appendix to Rules No. 23	
1925 Criminal Justice Act	15 and 16 Geo. V., c. 86, s. 24		
1926 Judicial Proceedings (Regulation of Reports) Act	16 and 17 Geo. V., c. 61		
1935 Post Office (Amendment) Act	25 Geo. V., c. 15, ss. 13 and 15		
		103	

III. EMINENT PERSONS WHO HAVE APPEARED
AS WITNESSES IN OBSCENE LIBEL TRIALS OR
WHO HAVE DEFENDED BOOKS AGAINST
BANNING

	PAGE
H. G. Bohn	147
Moncure D. Conway	149
Robert Buchanan	128
Edward Carpenter	128
George Moore	90, 128
J. M. Robertson	128
Bernard Shaw	40, 90, 128, 152
Thomas Hardy	90
H. G. Wells	90, 111
Arnold Bennett	40, 90
Sir Oliver Lodge	90
Sir W. Arbuthnot Lane	111
Harold Cox	111
St. Loe Strachey	111
Lascelles Abercrombie	40
Laurence Binyon	40
John Buchan	40
Edward Garnett	40
Laurence Housman	40
Desmond MacCarthy	38, 162
Rose Macaulay	40
Eden Phillpotts	40
Sheila Kaye-Smith	40
Lytton Strachey	40
E. M. Forster	137
Robert Briffault	74
Janet Chance	64, 66, 68, 76

Appendix

	PAGE
Geoffrey Dunlop	75
Michael Fielding	63
Professor J. C. Flugel	74
Professor J. B. S. Haldane	73
E. F. Hitchcock	76
Professor Julian Huxley	64, 66, 67-68, 75
Dr. W. Pinnington Jensen	66, 70
Professor Malinowski	73
Carol Morrison	75
Robert Nichols	75
Dr. Maude Royden	68, 72-73
Mrs. Seaton-Tiedeman	74
Amabel Williams-Ellis	73
Lady Winstedt	74
Dr. C. Voge	66, 69

IV. REPUTABLE BOOKS WHICH HAVE BEEN
BANNED OR WHOSE PUBLICATION HAS BEEN
RESTRICTED OR HAMPERED FOR REASONS
RELATED TO "OBSCENITY"

	PAGE
<i>Leaves of Grass</i> , by Walt Whitman	92, 104
<i>Poems and Ballads</i> , by A. C. Swinburne	44
<i>A Problem in Greek Ethics</i> , by John Addington Symonds	167
<i>A Problem in Modern Ethics</i> , by John Addington Symonds	167
<i>Moral Physiology</i> , by Robert Dale Owen	148
<i>Individual Family and National Poverty</i>	149
<i>The Fruits of Philosophy</i> , by Charles Knowlton	93, 141, 145-148
<i>Kama Sutra of Yatsyayana</i>	54
<i>The Arabian Nights</i>	53-54, 154
<i>The Wife's Handbook</i> , by H. A. Allbutt	113-114
<i>La Terre</i> , etc., by Zola	46, 47, 49
<i>Il Decamerone</i> , by Boccaccio	36, 100
<i>Diary of Pepys</i>	55
<i>Studies in the Psychology of Sex</i> , by Havelock Ellis	25, 61, 127-135, 169
<i>Chapters on Human Love</i> , by Geoffrey Mortimer	133
<i>Psychopathia Sexualis</i> , by Krafft-Ebing	163
<i>Conjugal Love</i> , by Swedenborg	105
<i>The Sexual Life</i> , by C. W. Malchow	105
<i>The Yoke</i> , by Hubert Wales	122
<i>Das Sexualleben unserer Zeit</i> , by Iwan Bloch	166
<i>Geschlechtsleben in England</i> , by Iwan Bloch	167
<i>Pansies</i> , by D. H. Lawrence	31
<i>The Rainbow</i> , by D. H. Lawrence	25, 31, 43

Appendix

	PAGE
<i>Lady Chatterley's Lover</i> , by D. H. Lawrence	
	25, 31, 32, 78, 152
<i>Jurgen</i> , by James Branch Cabell	116
<i>Tagebuch eines halbwüchsigen Mädchens</i> , prefaced by Freud	163
<i>Married Love</i> , by Marie Stopes	117
<i>Contraception</i> , by Marie Stopes	118
<i>Ulysses</i> , by James Joyce	25-28, 118, 170
<i>Mémoires of Casanova</i>	55
<i>The Sex Side of Life</i> , by Mary Ware Dennett	117
<i>The Cantab</i> , by Shane Leslie	25, 35
<i>My Life and Loves</i> , by Frank Harris	30
<i>A la Recherche du Temps perdu</i> , by Proust	55
<i>Geschlechtskälte der Frau</i> , by Wilhelm Stekel	164
<i>The Well of Loneliness</i> , by Radclyffe Hall	
	25, 36-43, 78, 118
<i>Candide</i> , by Voltaire	117
<i>The Sleeveless Errand</i> , by Norah James	162
<i>Death of a Hero</i> , etc., by Richard Aldington	45
<i>Monsieur Nicholas</i> , by Restif de la Bretonne	55
<i>Parenthood: Design or Accident</i> , by Michael Fielding	114
<i>Het volkommen Huwelyk</i> , by Van de Velde	163
<i>A Classical Dictionary of the Vulgar Tongue</i> , edited by Eric Partridge	162
<i>La Légitimité des Actes Sexuels</i> , by René Guyon	163
<i>Boy</i> , by James Hanley	135-138, Bib. item 40 (c)
<i>Guido and the Girls</i> , by Waldo Sabine	57
<i>Les Chansons de Bilitis</i>	
<i>Aphrodite</i>	} by Pierre Louÿs 48
<i>Les Aventures du Roi Pausole</i>	48
<i>Dialogui Meretrecii</i> of Lucian	48
<i>Là-Bas</i> , by Huysmans	48
<i>Les Vies des Dames Galantes</i> , by Brantôme	48

The Banned Books of England

	PAGE
<i>Satyricon</i> of Petronius	48
<i>Greek Anthology</i>	48
<i>No Place for the Young</i> , by Erick Warman	49
<i>The Magnificent</i> , by Terence Greenidge	50
<i>Brass and Paint</i> , by Terence Greenidge	50
<i>Little Victims</i> , by Richard Rumbold	50
<i>Sane Sex Life and Sex Living</i> , by H. W. Long	50, 166
<i>De Daemonialitate of Sinistrari</i>	51
<i>Histoire de Magdelaine Bavent</i>	51
<i>Er Roud el Aater p'nezaha el Khater</i> , by Nefzouri	52, 54
<i>Bessie Cotter</i> , by Wallace Smith	138-139
<i>Dying Flame</i> , by Gervée Baronte	136
<i>The Sexual Impulse</i> , by Edward Charles	61-78, 85, 124, 127, 143, 167, 170, 172
<i>The Work, Wealth and Happiness of Mankind</i> , by H. G. Wells	97
<i>Moll Flanders</i> , by Defoe	100
<i>The Tropic of Cancer</i> , by Henry Miller	29
<i>Birth Control Methods</i> , by Norman Haire	110

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The Banned Books of England

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Page 132

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The Banned Books of England

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The Banned Books of England

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Page 137

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Page 95
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INDEX

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- | | |
|--|---|
| <p><i>A la Recherche du Temps perdu</i>, IV</p> <p>Abercrombie, Lascelles, III</p> <p><i>Abinger Harvest</i>, B₃₇</p> <p>Abortion, 96, 108, 171</p> <p>Acton, W., 54</p> <p><i>Adult, The</i>, 128, 129, 131</p> <p>Advertisements, 50, 66, 166</p> <p><i>Agents provocateurs</i>, 24, 106</p> <p>Aldington, Richard, 86, IV</p> <p>Aldred, Guy and Rose, 110</p> <p>Allbutt, Dr. H. A., IV</p> <p>America, 30, 45, 101–110, 114–122, 133</p> <p>Aldington's novels, 45</p> <p>cases, I</p> <p>expert evidence, 119</p> <p>Junior League of the City of New York, 121</p> <p>libraries, 94</p> <p>New York Society for the Suppression of Vice, 40, 118–120</p> <p><i>Ulysses</i>, 25–27, 118</p> <p><i>Well of Loneliness</i>, 40, 118</p> <p><i>Analects</i>, 122</p> <p><i>Ann Veronica</i>, 90</p> <p>Anti-Gambling League, 175</p> <p><i>Aphrodite</i>, IV</p> <p>Apollinaire, G, B₃₈</p> | <p><i>Arabian Nights</i>, IV</p> <p><i>Areopagitica</i>, 173</p> <p>Armitage, Gilbert, B₃</p> <p><i>Ars Amatoria</i>, 82</p> <p>Art, works of, 38, 140, 165</p> <p><i>At Scotland Yard</i>, B₁₀</p> <p>Atkinson, Sir E. T., B₄₁</p> <p>Australia, 100</p> <p>Authors, and “obscenity,” 126–127, 159, 176</p> <p>Authors, International Congress of, 137</p> <p><i>Autobiography</i>, by Annie Besant, B₇</p> <p><i>Aventures du Roi Pausole</i>, Les, IV</p> <p>Avory, Horace, 128</p> <p><i>Ball-Room to Hell, From the</i>, 105</p> <p><i>Banned Books</i>, B₃₅</p> <p><i>Banned in England</i>, B₃</p> <p>Baronte, Gervée, IV</p> <p>Barraclough's case, I</p> <p>Baudelaire, 122</p> <p>Bavent, Magdelaine, IV</p> <p>Bedborough, George, 128–132</p> <p><i>Bedborough Trial, A Note on the</i>, B₈</p> <p>Bell, Clive, B₁₉</p> <p>Benet, Stephen Vincent, 72</p> |
|--|---|

The Banned Books of England

- Bennett, Arnold, III
Bennett, Mr. Curtis, 166
Besant, Annie, 143, 146-148,
 156, B5, B7
Bessie Cotter, IV
Bibliothèque Nationale, 94
Binyon, Laurence, III
Birkett, Norman, K.C., 37-39
Biron, Sir Chartres, 36-39
Birth Control Methods, IV
Birth Control Review, 110
Blackwell, Basil, B34
Blake, William, 33, 153
Blasphemy Act, 171-172
Bloch, Iwan, 95, IV
Boccaccio, IV
Bodkin, Sir Archibald, 58, 59
Bohn, H. G., III
Bonner, Hypatia Bradlaugh, B6
Book World, The, B34
Boriswood Ltd., 66-77, 127, 135
Boy, IV
Boyd, Mr. E. C. P., 110
Bradlaugh—
 Charles, B6
 trials, I, B5, B13
Bramwell, Lord Justice, 147
Brantôme, IV
Brass and Paint, IV
Brave New World, 69, 72
“Breeches” Bible, 162
Brend, Dr. William A., B33
Brentford, Lord, B22
Brett, Lord Justice, 147
Briffault, Robert, III
B.B.C., 161
British Medical Journal, 66
British Museum, 93
Brown, Heywood, B15
Browne, Stella, 108
Buchan, John, III
Buchanan, Robert, III
Burton, Sir Richard, 53-54
Cabell, James Branch, IV
Caine, Hall, 90
Caldwell, Erskine, 118-121
Campbell, John, first Baron,
 22-24, 150, 160 (*see also* Definitions of “obscenity,” Obscene Publications Act)
Campbell, Sir Rollo Graham,
 162
Canada, 98-99
Candide, IV
Cantab, The, IV
Cape, Jonathan, Ltd., 36
Carpenter, Edward, 43-44, 45,
 69, 92, 93, III, B11
Casanova, 122, IV
Case for Liberty, The, B29
Cassels, J. D., K.C., 66-77
Causton, Bernard, B26
Censorship in England—
 literary
 danger of re-introduction,
 173
 law of libel (*see Libel*)
 none in true sense, 19
 social history, 79-82
 without legal sanction, 21
 (*and see Libraries*)
 stage, 31
 (*See also America, Dominions, France, Japan, Scotland*)
Certiorari, 146
Chance, Janet, III
Chansons de Bilitis, IV
Chants de Maldoror, 153
Chapters on Human Love, IV

Index

- Charles Bradlaugh*, B6
Charles, Edward, 82, 144, IV
Chatto and Windus, 35
Chaucer, 20, 161
China, 122
Christianity, 80-81
Cinematograph films, 103
Clarke, Sir Percival, 72-77, 162
Classics, 46-55
Classical education, 82
Classical Dictionary of the Vulgar Tongue, IV
Cleland, John, 151-152
Cockburn, Lord Chief Justice, 24, 140-141, 146, 151, 158-159, 165 (*see also* Definitions of "obscenity")
Common Law, 20-23, 57, 80, 101, 123-126, 140
Comstock Act, 106
Comstock, Anthony, 105-107, 108-109, 118
Comstock Roundsman of the Lord, Anthony, B15
Confessional Unmasked, The, 24
Confucius, 122
Congress, International Purity, 107
Conjugal Love, 105
Contraception, 89, 93, 107-114
Contraception, I, IV, B13
Contraception, Medical History of, 114
Conway, Moncure D., III
Cotton, Lord Justice, 147
Country Wife, 161
Cox, Commissioner Adelaide, 84
Cox, Harold, III
Craig, Alec, B33
Crates the Cynic, 155
- Criminal Justice Act, I
Curl's case, I
Customs Consolidation Act, 1876, II
Customs authorities, English, 26, 28-30, 34
- Dante, 122
Darling, Lord, 150
Darwin, 122
Dawson of Penn, Lord, 88
Death of a Hero, IV
Decamerone, IV
Decline of Liberty in England, The, B29
De Daemonialitate, IV
Definitions of "obscenity"— America, 103-104, 115, 116, 118, 121
Campbell, 23, 150, 151, 176, 179
Cockburn, 24, 40, 66-67, 78-79, 115, 116, 118, 151, 174
Comstock, 106
Ellis, Havelock, 155
"public good" and, 57, 141
statutory, none, 59
style, in relation to, 70-71, 120, 159
(*See also* Morality, sexual)
Defoe, IV
De Marny's case, I
Dennett, Mary Ware, 116-117, I, IV, B17, B18
Dialogui Meretrecii, IV
Dickinson, Lord, 84
Dickinson, Sir John, 31
Digest of the Criminal Law, B12
Displaying of Supposed Witchcraft, The, 178

The Banned Books of England

- Do we need a Censor?* B22
Dominions, British, 57, 95-100
Douglas, James, 36
Dugdale v. R., I
Dulwich Gallery, 164-165
Dummett, Mr. R. E., 166
Dunlop, Geoffrey, III
Dunn, Dick, 175
Dying Flame, IV
- Ecce Homo*, 32
Education Act, 1870, 80
Eliot, T. S., 25
Ellis, Havelock, 93, 117, 150,
 155, IV, B8-10, B27
Ellis, Havelock, B14
Encyclopaedia Britannica, 146
*Encyclopaedia of Sexual Know-
ledge*, 166
Encyclopaedia Sexualis, B17
Enemies of Liberty, The, B29
*L'Enfer de la Bibliothèque
Nationale*, B38
Epipsychidion, 142
Ernst, Morris, B2, B17
Essay on Women, 95
Expert evidence—
 America, 119
 educational and scientific, 62,
 67-70, 72-76
 “obscenity,” 36-39, 51, 67
“Fallen in the World War,” 34
Family Limitation, 108
Fanny Hill, 151
Fear of Books, The, B28
Fielding, Michael, 154, III, IV,
 B32
Fielding, Richard, 80
Fifteen Plagues of a Maidenhead,
 20
- Fleuret, F., B38
Flugel, J. C., III
Foreign language, 52
Foreign literature, 46-55
Forster, E. M., 150, III, B37
Fortune Press Ltd., 48
France, 21, 46-48, 78
Freddie, 34
Free speech, 143, 150
Freethinkers, 149
Freud, 169, IV
Friede, American case, I, B40(a)
Fruits of Philosophy, IV
Future of an Illusion, 169
Fulton, Eustace, K.C., 36, 72
- Galileo, 122
Gallichan, Walter M., B25
Garnett, Edward, III
Gascoyne, David, 153
Gautier, Theophile, 40
Geneva Bible, 162
Geschlechtskälte der Frau, IV
Geschlechtsleben in England, IV
Gibbon, Edward, 80
Gilbert, Stuart, 28
God's Little Acre, 118-121, B30
Goddard, Mr. Justice, 58
Goldsmith, Oliver, 80
Gomprez, Theodor, 167
Greek Anthology, 82, IV
Greek Thinkers, 167
Greenidge, Terence, IV
Greenspan, Magistrate Ben-
jamin, 119
Griffith, Dr. Edward F., 69
Grose, Francis, 162
Grosz, Georg, 32
Groves, E. R., 69
Guido and the Girls, IV
Guyon, René, IV

Index

- Haight, Anne Lyon, B35
Haire, Norman, 65, 166, IV
Haldane, J. B. S., III
Hall, Sir Charles, 131
Hall, Radclyffe, 61, IV
Halsbury's Laws of England, B12
Halsey v. N.Y. Society, I
Hand, Judge, 116
Hanley, James, 135-138
Hardy, Thomas, 90, III
Harris, Frank, IV, B24
Harris, Frederick, B4
Harvard University, 25, 117
Haynes, E. S. P., B29
Het volkomen Huwelyk, IV
Hicklin's case, I, 125
Himes, Norman E., B36
Hirsch's case, I
Hirschfeld, Magnus, 95
Histoire de Magdelaine Bavent, IV
Hitchcock, Eldrid Frederick, III
Homogenic Love, 45
Horder, Lord, 66
Housman, Laurence, III, B23
Huxley, Julian, III
Huxley, Aldous, 69
Huysmans, IV
- Ibsen, 122
Illustrations, 49, 112, 118
Indecent Advertisements Act, II
Indictments Act, II
Indiscretions of a Young Girl, 157
Individual Family and National Poverty, 149
Industrial Revolution, 81
Inge, Dean, 132
Inskip, Sir Thomas, 139
Institut für Sexualwissenschaft,
 95
- Irish Free State, 85, 95-98
Italy, 85
Ives, George, B23
- Jackson, Holbrook, B28
James, Norah, IV
Japan, 110
Jensen, Dr. W. Pinnington, III
Jessel, Sir George, 148
“Jix,” *see* Brentford, Lord
John Brown's Body, 72
Johnson, Dr., 80
Journal of Medical Science, 66
Joyce, James, 35, 122 (*see also Ulysses*)
Joyce's Ulysses, James, 28
Jude the Obscure, 90
Judicial Proceedings Act, II
Juliette, 153
Junior League of the City of New York, 121
Jurgen, IV
Jury, trial by, 56, 123-124, 147,
 149
Justice of the Peace, 124
Justine, 153
- Kama Shastra Society, 53, 54
Kama Sutra, IV
Kant, 122
Keeping it Dark or the Censor's Handbook, B26
Kingsley, Charles, 164
Knight, E. B., 48, 67-68
Knowlton, Charles, IV
Kock, Paul de, 21
Krafft-Ebing, 116, IV
- Là-Bas*, IV
Lady Chatterley's Lover, IV, B24

The Banned Books of England

- Lady Macbeth of Mensk*, 177
Lady of the Cameliæs, The,
 23
Lamp of Destiny and Other Poems, The, 56
Lancet, 66
Lane, Sir W. Arbuthnot, III
Lang, Andrew, 20
Lang, John, 122
La Terre, IV
Lautréamont, Comte de, 153
Law, *see* Obscene Libel
Law and Obscenity, The, B4
Law Journal, 79
Law of Libel Amendment Act,
 1888, II
Law reporting, 96, 124-126
Lawrence, D. H., 31-34, 35, 61,
 IV, B21
Lawrence, T. E., 161
Lawyer's Last Notebook, The,
 B29
Lawyer's Notebook, A, B29
League of Nations, 58
Leaves of Grass, IV
“Leda and the Swan,” 35
Leech, Margaret, B15
Legislation, prospects of reform
 by, 170-174
Légitimité des Actes Sexuels, IV
Legitimation League, 128-132
Leslie, Shane, IV
Let's Go Naked, 118
Lewis, H. K., and Co., 66
Libel—
 blasphemous, 19, 93, 143,
 171-172
 defamatory, 19, 144-145
 obscene (*see* Obscene libel)
 seditious, 19, 143
Liberty in England, B37
Libraries, 39, 90-95, 136
“publication” of banned books, 92
(*See also* America, Bibliothèque Nationale, British Museum, Institut für Sexualwissenschaft, Vatican)
Life and Letters, 162, B23
Lindey, Alexander, B17
Little Review, 25
Little Victims, IV
Lodge, Sir Oliver, III
London, Bishop of, 83, 85, 89
Long, H. W., 50
Longfellow, 46
Louÿs, Pierre, IV
Love's Coming of Age, 43, 45,
 69, 92
Lucian, IV
Ludovici, A. M., 108
Luther, 122
Lush, Sir Robert, 164-165
Macaulay, Rose, III
MacCarthy, Desmond, 165, III
Mackay, Charles R., 146
Mademoiselle de Maupin, 40
Magnificent, The, IV
Malchow, Dr. C. W., IV
Malinowsky, Bronislaw, III
Mamhead, Lord, 83
Man and Woman, 135
Mardrus, Dr. J. C., 54
Maria Monk, 99
Married Love, I, IV, B17
Martin, Sir Theodore, 128
Mathers, E. Powys, 54
Mead, Mr. Frederick, 33
Medical History of Contraception, B36

Index

- Medical Review of Reviews*, 117
Medical profession, 113-114
Memoirs of a Coxcomb, 152
Methodism, 80
Methuen and Co., 31
Metropolitan Police Act, 1839,
 II
Michelangelo, 35
Millar, Henry, IV
Milton, 173
*Modern Marriage and Birth
Control*, 69
Moll Flanders, IV
Monsieur Nicholas, IV
Montalk, Count Potocki of,
 55-57, I
Moore, George, III
Moral Physiology, IV
“Moral poison,” 22
Morality, sexual, 68, 71, 122,
 141-144, 151
More Essays of Love and Virtue,
 B27
More from a Lawyer’s Notebook,
 B29
Morrison, Carol, III
Mortimer, Geoffrey, 133, IV
Mrs. Warren’s Profession, 106
Music, 176-177
My Days and Dreams, B11
My Fight for Birth Control,
 B16
My Life and Loves, IV, B24
Myers, Harry, 110

National Birth Control Associa-
tion, 114
National Gallery, 35
National Vigilance Association,
 83, 122
Nefzouri, IV

New South Wales, 57
New York Society for the Sup-
pression of Vice, 40,
 118-120
*New York v. The Viking Press
Inc.*, and Helen Schiller,
 118
New Zealand, 100
Nichols, Robert, III
No Place for the Young, IV
Nodier, Charles, 95
Nott, Judge, 115
Nudity, 35, 99, 118, 144
Nunburnholme, Dowager Lady,
 84

Obscene libel—
 aiding and abetting publica-
 tion, of, 136
 social history, relation to,
 79-82
 statutes, II
 jurisdiction—
 summary, 21, 49, 123-124
 of Law Courts, 172
 important cases, 174
law—
 arbitrarily enforced, 45,
 79
 possible attitudes, 150-
 151
young persons, 158
(See also Advertisements,
 Authors, Common Law,
 Jury, Law Reporting,
 Libraries, “Obscenity,”
 Prosecutions, Pub-
 lishers, Publication)
Obscene Publications, Interna-
tional Conference for
the Suppression of, 59

The Banned Books of England

- "Obscene" Literature and Constitutional Law, B1
Obscene Publications Act, II
(*see also* Prosecutions)
"Obscenity"—
classics and, 38, 48, 165
foreign literature, 48
exchange of, 59
"moral poison," 22, 36
nature of, 177-178
pictorial, 32-35, 49, 112, 140,
164, 165
sexual content in, 51
(*See also* Contraception, Definitions, Expert Evidence, Music, Pornography, Post Offices, Science, Vocabulary, Witchcraft)
Ogden, Thomas, 83
Olivier, Lord, 88
On British Freedom, B19
Oriental literature, 53-55
Ovid, 82
Owen, Robert Dale, IV
Oxford University Press, 162

Page, Leo, 124
Paintings, 32-35, 164-165
Pansies, IV
Parenthood: Design or Accident,
IV, B32
Partridge, Eric, IV
Payne, John, 36
Pennsylvania v. Sharpless, I
Pepys, IV
Perceau, L., B38
Petersoen, C., 34
Peterson, Houston, B14
Petronius, 82, IV
Phillpotts, Eden, III

Plato, 49
Plomer, William, 88
Poems and Ballads, IV
Poison of Prudery, The, B25
Police, 24, 30, 43-44, 49, 87
Police Court, *see* Summary Jurisdiction
Pornography, 21-23, 76, 150-158, 159, 169, 170
Pornography and Obscenity, B21
Pornography and So On, B21
Porter, Mr. Justice, 137
Post Offices and "obscenity,"
102-103, 110, 115, 117,
148
Post Office Act, II
Post Office (Amendment) Act,
II
Powell v. The Kempston Park Race Course Co., 175
Powell, Mr. Ronald, 48, 67-71,
166
Praz, Mario, 153
Press, freedom of, 142-144
Price, *see* Publication
Problem in Greek Ethics, A, 167
Problem in Modern Ethics, A,
167
Procuring "obscene" matter, 21
Propertius, 122
Prosecutions, obscenity—
cases under Obscene Publications Act, 31, 35, 36,
47, 110, 127, 162, 166
fear and threat of, 25, 43-46
misdemeanour cases, 46, 56,
58, 59, 66, 101, 129, 136,
138, 145, 146, 149
postal cases, 105, 117, 166
provincial, 136
Prostitution, History of, 105

Index

- Proust, iv
Psychopathia Sexualis, 116, iv
Public Health Acts Amendment Act, ii
Public Morality Council, 83
Publication—
 definition in law, 19, 55–59
 in relation to “obscene libel”
 extensive repercussions of law, 43–45
 price, 53, 54, 55, 66, 67, 113, 114, 167, 168
 restriction, 53, 54, 55, 163–170
 social class addressed, 69, 149, 172
 prior, 69
 procuring obscene matter for, 21
 (See also Libraries)
Publishers and “obscenity,” 126–127
Punch, 177
- Quarter Sessions, 49
Queen v. Charles Bradlaugh and Annie Besant, B5
Queen Victoria as I Knew Her, 128
- Rabelais, 56, 122
Rainbow, The, iv
Read’s case, i
Reade, Rolf S., B39
Reform, possible methods, 163–178
Registrum Librorum Eroticum, B39
Restif de la Bretonne, iv
Revaluation of Obscenity, B27
- R. v. Mary Carlile*, i
Rhythm, The, 97
Richardson, Samuel, 80
Riese, Hertha, B23
Roberts, Harry, 108
Robertson, J. M., iii
Robinson, Victor, B17
Rochester’s poems, 20
Rodker, John, 153
Roman Catholics and Birth Control, 97
Romantic Agony, 153
Roosevelt, Theodore, 105
Rosso, Il, 35
Roud el Aater, Er, iv
Rousseau, 122
Royden, Dr. Maude, iii
Rubinstein, H. F., B23
Rumbold, Richard, iv
Russell, Bertrand, B23
Russell on Crime, B12, 125
- Sacrifice to Attis*, B33
Sade, The Marquis de, 152–154
Salvation Army, 84
Sand, 72
Sane Sex Life and Sex Living, iv
Sanger, Dr. W. W., 105
Sanger, Margaret, 107–112, B16
Sanger, William, 109
Satyricon, 82, iv
Scholartis Press, 162
Schroeder, Theodore, B1, B17
Science, 140, 165
 alleged cloak for “obscenity,” 131
Scotland, 23
Second-hand book trade, 133
Seagle, William, B2
Seaton-Tiedeman, M. L., iii

The Banned Books of England

- Selincourt, Ernest de, 104
Sequana Ltd., 48
Seven Pillars of Wisdom, The,
 161
Sex and Revolution, B33
Sex in Marriage, 69
Sex Education, 65, 155, 176
Sex Side of Life, The, iv (see
 also Dennett)
Sexology, 52, 54
Sexual Impulse, The, iv, B40(d)
Sexual Life, The, iv
Sexual Life of Savages, The, 73
Sexual Reform Congress, London,
 B23
Sexualleben unserer Zeit, Das,
 166, iv
Shadwell, Thomas, 151
Shakespeare and Co., 26
Shaw, Bernard, 30-31, 106, III
Shaw, Bernard, B24
Shelley, P. B., 142
Shi-Hwang-ti, 122
Simpkin, Marshall, Messrs., 66
Sinistrari, Ludovico Maria, iv
Sleeveless Errand, The, IV
Smith, Sheila Kaye-, III
Smith, Sydney, 89
Smith, Wallace, iv
Smollett, 20
Snobbery with Violence, 57
Societies, "anti-vice," 82-83,
 87, 89, 106, 113, 149, 175
South Africa, 99
Southwark, Bishop of, 84
Steele v. Brannan, I
Stekel, Dr. Wilhelm, iv
Stephen, Sir James, 57, 140-143,
 145, 150, B12
Sterne, 80
Stone's Justices' Manual, B12
Stopes, Marie, 91, 97, 112, 122,
 iv, B13, B23
Strachey, Lytton, III
Strachey, St. Loe, III
Streeton, F. P., B23
Studies of Greek Poets, 167
Studies in the Psychology of Sex,
 iv, B9, B10, B14
Style, see Definitions of "ob-
 scenity"
Summary Jurisdiction, 21, 49,
 123-124, 170, 174
Summers, Montague, 51
Sumner, John S. (see New York
 Society for the Suppres-
 sion of Vice)
Sumner v. James Joyce, 25
Sunday Express, 36
Suppression of Vice, Society for
 the, 83, 149
Surrealism, A Short Survey of,
 153
Surrealist Exhibition of 1936, 34
Swearingen v. U.S.A., I
Swedenborg, iv
Sweeney, John, B10
Swinburne, A. C., iv
Symonds, John Addington, 104,
 IV
Symposium, 49
*Tagebuch eines halbwüchsigen
 Mädchen*, IV
Telephones, 103
Tempest, Marie, 84
Thurtle, E., M.P., 171
Times, The, 44, 47, 49, 83, 84
To the Pure, B2
Towards Democracy, 45
Town Police Clauses Act, 1847,
 II

Index

- Translations, 46-55
Tristan and Isolde, 176-177
Tropic of Cancer, The, iv
Truelove, Edward, 113, 148-
 149
Truth About Publishing, The,
 B20
- Ulysses*, i, iv, B31
Uncle Tom's Cabin, 116
Unwin, Stanley, B20, B34
U.S. v. Bennett, i
- Vagabond Love*, 88
Vagrancy Act, 1824, ii
Vagrancy Act, 1838, ii
Van Amringe, Magistrate, 118
Van de Velde, Theodoor Hen-
 drick, iv
Vatican Library, 94
Venus of the Cloister, 20
Verlaine, 56
Vies des Dames Galantes, iv
"Villiers, Dr. Roland de," 129,
 132, 133
Virgil, 122
Virtuoso, 151
Vizetelly, Henry, 46-47
Vocabulary, 27, 52, 76, 139, 142,
 161-162 (*see also* Defini-
 tions)
Voge, Cecil, III
Voltaire, iv
- Wagner, Richard, 177
Wales, Hubert, iv
- Wallace, Sir Robert, 40
Watts, Charles, 145
Webster, John, 178
Well of Loneliness, iv, B40(a)
Wells, H. G., 114, III, IV
Where the Child is King, 133
Whitman, Walt, iv
Whitman, Walt, 104
Whitworth, Frank, 79
Who's Obscene? B18
Wife's Handbook, The, iv
Wild, Sir Ernest, 56
Wilde, Oscar, 44
Wilkes, John, 20, 95
Williams-Ellis, Amabel, III
Wilson, Woodrow, 107
Winstedt, Lady, III
Witchcraft, 51-52, 77, 99, 178-
 179
Woman Rebel, 108, 109
Woman Thou Gavest Me, The,
 90
Woolf, Virginia, 150
Woolsey, Judge, 26, 115, B31
"Workshop Exhibitionism," 34
*Work, Wealth and Happiness of
 Mankind*, iv
Wright, Dr. Helena, 73
Wycherley, 161
- Yatsyayana, iv
Yoke, The, iv
Young, G. Gordon, B26
Young persons, 103, 158, 177
- Zola, iv



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